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Supreme Court, U.S.
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No. _____

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

JOHN R. ADCOX, et al.

Petitioners,

v.

TELEDYNE, INC., et al.

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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237 pp

QUESTIONS PRESENTED FOR REVIEW

I. Whether a federal court has jurisdiction to determine the validity or existence of a labor agreement.

II. Whether 28 U.S.C. Section 1337(a) confers jurisdiction over a claim against a union for breach of its duty of fair representation where the court has dismissed a breach of contract claim against the employer.

III. Whether a union member's vested right to severance pay is extinguishable by a labor agreement absent the union member's consent.

IV. Whether the doctrine of promissory estoppel is applicable to claims for severance pay and would preclude Summary Judgment where union members reasonably relied on a contract provision providing severance upon plant closing, the employer was silent upon the unions' representations that employees would be entitled to severance pay under the contract provision, the employer's calculation of severance was based upon the contract provision and the employer's and unions' past practice provided severance to employees who were laid off due to a permanent closing.

PARTIES TO THE PROCEEDING

Petitioners, who were plaintiffs-appellants in the courts below, are 241 former long term (average age - 47 years; average seniority - 22 years) hourly employees of Teledyne Industries, Inc., Teledyne Monarch Rubber Division, at the plant located in Hartville, Ohio. A list of Petitioners, who were all parties in the appeal to the United States Court of Appeals for the Sixth Circuit, is included at App. VV.

The respondents, defendants-appellees in the courts below, Teledyne, Inc.; Teledyne Industries, Inc., Teledyne Monarch Rubber Division ("Teledyne"); United Rubber, Cork, Linoleum and Plastic Workers of America International Union ("URW"); and United Workers Local Union No. 99 ("Local 99") are, respectively, the parent corporation of Teledyne Monarch Rubber, Petitioners' former employer and Petitioners' former international and local unions.

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OPINIONS BELOW

The Order of the United States District Court for the Northern District of Ohio, Eastern Division entered on December 23, 1992, 810 F.Supp. 909 (N.D. Ohio 1992), is reprinted in the Appendix at pages A1-A18.

The decision of the United States Court of Appeals for the Sixth Circuit entered on April 19, 1994, 21 F.3d 1381 (6th Cir. 1994), is reprinted in the Appendix at pages B1-19.

STATEMENT OF JURISDICTION

Jurisdiction of this Honorable Court is invoked under 28 U.S.C. 1254(1) to review the decision of the United States Court of Appeals for the Sixth Circuit, 21 F.3d 1381, decided and filed April 19, 1994, affirming the Judgment of the United States District Court for the Northern District of Ohio, Eastern Division dismissing Petitioners' claims on Summary Judgment.

RELEVANT STATUTES

The relevant statutes to the issues upon which this Petition for Writ of Certiorari is based include 29 U.S.C. 185(a), 29 U.S.C. 1132(a)(1)(B), 29 U.S.C. 159(a) and 28 U.S.C. 1337(a). 29 U.S.C. 185(a) and 28 U.S.C. 1132(a)(1)(B) relate to federal court jurisdiction to determine the existence or validity of a labor agreement. 29 U.S.C. 159(a) and 28 U.S.C. 1337 relate to federal court jurisdiction over a claim against a union for breach of its duty of fair representation where the court has dismissed a breach of contract claim against the employer. These statutory provisions, as well as relevant jurisdictional statutes, are attached as Appendix UU.

STATEMENT OF THE CASE

A. Procedural History.

Petitioners filed their Complaint on December 13, 1991, in the United States District Court, Northern District of Ohio, Eastern Division. Relevant to this petition, the Complaint alleged that in denying Petitioners severance pay under a Pension, Insurance and Service Award Agreement, Respondents', Teledyne, violated Section 301 of the Labor Management Relations Act, 29 U.S.C. 185 (LMRA) and Section 502(a)(1)(B) of the Employee Retirement Income Security Act, 29 U.S.C. 1132(a)(1)(B) (ERISA). Respondents, URW and Local 99, were alleged to have breached its duty of fair representation (DFR) under Section 9(a) of the LMRA, 29 U.S.C. 159(a). Jurisdiction was invoked 'under 29 U.S.C. 185; 29 U.S.C. 159(a); 29 U.S.C. 1132(a)(1)(B); 28 U.S.C. 1331; and 28 U.S.C. 1337(a). On December 23, 1992, the Honorable Judge Sam H. Bell denied Petitioners' Motion for Summary Judgment and granted Summary Judgment for all Respondents, 810 F.Supp. 909 (N.D. Ohio 1992). (App. A). Final judgment was entered on that date. (App. A).

Petitioners filed their Notice of Appeal to the United States Court of Appeals for the Sixth Circuit on January 15, 1993 invoking that Court's jurisdiction under 28 U.S.C. 1291.

On April 19, 1994, the United States Court of Appeals for the Sixth Circuit, Milburn, Boggs and Contie, affirmed the District Court Judgment, 21 F.3d 1381 (6th Cir. 1994). (App. B).

B. Statement of Facts.

Petitioners' employment with Teledyne was terminated as a result of its Hartville plant closing on June 15, 1991. (App. C).

The URW, Local 99 and Teledyne had negotiated numerous collective bargaining agreements ("CBA") over the years. The last, ratified in 1988, contractually governed the Petitioners' employment until its expiration on June 16, 1991. (App. D, E).

The 1988 CBA, as did previous contracts, included a Pension, Insurance and Service Award Agreement ("blue book"). (App. F: Kennedy depo., p. 7, lines 3-24; p. 31, lines 20-24; p. 56, lines 6-20; App. G). The blue book provided Petitioners with contractual entitlement to a severance payment termed a "Special Distribution" in the event that the Hartville plant closed. (App. G).

In January 1991, Teledyne announced that it was closing its plant in Hartville, Ohio. (App. H: Boggs depo., p. 66, lines 22-25; p. 67, line 1). The closure was a result of Teledyne's failure to sell the plant in the fall of 1990. Of the several interested buyers, only one, the Edgewater Group, "proceeded to significantly enter the process of negotiating a sale". (App. I: Smith depo., p. 19, lines 13-24; App. J).

Teledyne management believed that it was in all of the parties' best interests, including the Petitioners, to sell the plant. (App. I: Smith depo., p. 16, lines 8-19). The obvious benefit to the Petitioners was that they would keep their jobs. (App. I: Smith depo., p. 49, lines 8-15).

When the Petitioners met to discuss the Edgewater proposal, Daris Boggs ("Boggs"), President of Local 99, advised them prior to voting on Edgewater's proposal that, if Teledyne sold rather than closed the plant, they would not receive their severance pay as provided in the blue book. (App. K: May depo., p. 19, lines 16-24; App. L: Adcox Aff., paragraph 9; App. M: Whetsell Aff., paragraph 9; App. N; App. O).

In responding to Petitioners' questions as to their entitlement to severance, James Kennedy ("Kennedy"), Vice President of Local 99 and its pension and insurance expert for twenty-five years, stood and read pages 89-92 of the blue book. (App. K: May depo., p. 22, lines 16-22; App. F: Kennedy depo., p. 6, lines 1-14; App. L: Adcox Aff., paragraph 10; App. M: Whetsell Aff., paragraph 10). Kennedy went so far as to calculate certain employees' severance pay based upon the formula contained in the blue book and the employees' 1985 wages. (App. F: Kennedy depo., p. 35, lines 6-25).

Following the union meetings, the employees voted down Edgewater's proposal nine to one. (App. K: May depo., p. 22, lines 7-15). Subsequent to the employees' veto, Edgewater presented Boggs with two amendments to its original offer, upgrading the pension and health insurance proposals. (App. K: May depo., p. 20, lines 4-13). Boggs never presented this revised offer from Edgewater to the members of Local 99. (App. L: Adcox Aff., paragraph 12; App. M: Whetsell Aff., paragraph 12).

The failure to ratify the proposed CBA with Edgewater ended its negotiations with Teledyne. (App. I: Smith depo., p. 21, line 25; p. 22, lines 1-3). Because the plant was not going to be sold, it was scheduled to close.

The URW and Local 99 continued throughout the plant closing negotiations to represent to Petitioners that they were entitled to the severance pay contained in the blue book. (App. K: May depo., p. 22, lines 16-22; App. F: Kennedy depo., p. 7,

lines 3-24; App. L: Adcox Aff., paragraphs 10, 13; App. M: Whetsell Aff., paragraphs 10, 13; App. N; App. O; App. P; App. Q: Grimm depo., p. 23, lines 6-13; App. R: Carpenter depo., p. 19, lines 2-24; p.42, lines 15-25; p. 43, lines 1-2; App. S: Nelson depo., p. 45, lines 1-5; App. T: Correll depo., p. 18, lines 15-23).

The unions not only made direct representations to Petitioners relative to their entitlement to severance pay, but Teledyne's and the unions' past practice implied that Petitioners were entitled to severance. Seniority, as defined in the Teledyne hourly pension plan, recognizes that employees receive service pay upon termination. (App. U, pp. 1-2). In 1988, employees affected by closure of a department at the Hartville facility received a Ten Thousand Dollar ($10,000.00) severance payment. (App. V). Although over the years changes were made to the blue book in conjunction with the collective bargaining process and in response to changes mandated by ERISA, Teledyne never made any changes to the Special Distribution on pages 89-92 of the blue book. (App. W: Hartong depo., p. 28, lines 18-24; p. 29, lines 9-12). Neither did Teledyne ever inform its employees in writing that there were any changes to the Special Distribution section. (App. W: Hartong depo., p. 31, lines 8-12).

During the negotiations, at the unions' request, Teledyne calculated severance pay due the Petitioners according to the formula contained in the blue book. (App. S: Nelson depo., p. 57, lines 10-25; p. 58, lines 1-25; p. 59, lines 1-22; App. Q: Grimm depo., p. 27, lines 1-24; App. X). According to Teledyne's calculations, its hourly employees were entitled to between eight (8) and nine (9) million dollars in severance benefits. (App. S: Nelson depo., p. 60, lines 2-10; App. Q: Grimm depo., p. 27, lines 17-24; App. X).

Between January 17, 1991 and August 5, 1991, Teledyne, Local 99 and the URW engaged in effects bargaining in order to resolve issues relative to the plant shutdown. For the first time,

Teledyne took the position that virtually no one at the plant was entitled to the special distribution. Local 99 and the URW represented to its members that, if Teledyne would not agree to provide them with the Special Distribution, the unions would file a lawsuit on their behalf. (App. N; App. O; App. P; App. L: Adcox Aff., paragraph 14; App. M: Whetsell Aff., paragraph 14).

During effects bargaining, Teledyne proposed enhancing the pension benefit of its hourly employees by twelve percent (12%). (App. Y; App. S: Nelson depo., p. 56, lines 2-7; App. Q: Grimm depo., p. 35, lines 10-25; p. 36, lines 1-25; p. 37, lines 1-4; App. I: Smith depo., p. 67; lines 10-25; App. Z: Oddson depo., p. 30, lines 21-25; p. 31, lines 1-8).

Prior to any vote on the Plant Closing Agreement ("PCA"), Teledyne offered Petitioners a lump sum pension. (App. AA).

On June 14, 1991, URW and Local 99 held the first vote on the proposed PCA. (App. BB; App. H: Boggs depo., p. 24, lines 22-25; p. 25, line 1). The proposed agreement contained no provision for payment of the Special Distribution. Upon a vote, the proposed PCA was rejected by a vote of 143 for and 209 against. (App. L: Adcox Aff., paragraph 15; App. M: Whetsell Aff., paragraph 15).

Boggs was disappointed for the retirees that the PCA failed to get approval. Retiree health insurance was one of Local 99's highest priorities during negotiations. (App. CC).

In June 1991, subsequent to the first veto of the PCA and after the Hartville Plant was closed, Boggs directed Local 99 to contact its members by telephone to inquire as to whether they desired to vote a second time on the same PCA. (App. H: Boggs depo., p. 26, lines 1-25; p. 27, lines 1-25; App.R: Carpenter depo., p. 36, lines 16-24).

On or about June 28, 1991, the URW and Local 99 held a vote to decide whether the PCA should be voted on a second

time. (App. DD; App. L: Adcox Aff., paragraph 16; App. M: Whetsell Aff., paragraph 16). The majority of the union membership rejected reconsideration of the PCA by a vote of 124 to 73. (App. L: Adcox Aff., paragraph 17; App. M: Whetsell Aff., paragraph 17).

After the members voted June 28th not to reconsider their veto of the PCA, the union did an about-face. It issued "honorable withdrawal" cards to everyone except Daris Boggs, Jim Kennedy, Ken May, Bill Van Camp and Dorothy Bixler. (App. EE; App. GG: Bixler Aff., para. 7).

The effect of an Honorable Withdrawal ("HW") card is to terminate a member's URW and Local 99 membership, thereby voiding any rights or privileges in those unions. (App. FF; App. K: May depo., p. 32, lines 20-25). The order to issue HW cards was made by Boggs. (App. K: May depo., p. 32, lines 20-25).

Boggs knew the effect of an HW card. He had issued them on other occasions, such as January 22, 1990, when his letter directed the attention of the recipient to the union constitution and what it said about the cards, "Members to whom Honorable Withdrawal and Transfer Certificates have been issued forfeit all rights and privileges in the local union and the URW." (App. FF).

Before the plant closed, the union told its members that they would be exempt from dues and remain members until all business was final for up to one year after the closing. (App. GG: Bixler Aff., para. 6).

As long as there were at least eleven members in the union, the union by-laws required a regular monthly meeting. (App. GG: Bixler Aff., para. 8; App. HH, p. 1). The HW cards brought the union membership down to five. There were no more monthly meetings. (App. GG: Bixler Aff., para. 9).

After issuing the HW cards, Local 99 contacted its ex-members to inquire, for the third time, whether they desired to

vote again on the PCA. (App. II). The result of the survey was 127 postcards voting yes and 117 postcards voting no.

Local 99 scheduled a second vote on the PCA for August 22, 1991. (App. JJ). Two Hundred Fifty-Seven people voted. The plant had closed two (2) months earlier. The HW cards had been sent in July.

Prior to the August 22, 1991 vote, the URW and Local 99 informed its members that, if they did not approve the PCA: retirees of Teledyne would lose their health coverage; employees would not be able to obtain their vested pension money; and employees would not get their pension money at all if they insisted on receiving the special distribution. (App. L: Adcox Aff., paragraph 18; App. M: Whetsell Aff., paragraph 18).

Prior to the vote on August 22, 1991, Petitioners requested additional information and the opportunity to debate and organize opposition against the PCA. (App. L: Adcox Aff., paragraph 20; App. M: Whetsell Aff., paragraph 20). The URW and Local 99 denied Petitioners this right. (App. L: Adcox Aff., paragraph 21; App. M: Whetsell Aff., paragraph 21).

The URW constitution states that a question can be reconsidered only at the same meeting or at the next regular meeting. (App. HH). If reconsidered at the same meeting, a majority vote is sufficient. (App. HH, p. 3). If reconsidered at another meeting, then a two-thirds majority is required for everything but a CBA. (App. HH, pp. 3, 4).

The ballots cast on August 22, 1991 were counted as 154 in favor of the PCA and 103 against.

When it came time to vote on August 22nd, there had been no discussion, no meeting, nor any chance to organize opposition. There had been no meeting since June. (App. L: Adcox Aff., paragraph 20; App. M: Whetsell Aff., paragraph 20). The union would not allow it. (App. L: Adcox Aff., paragraph 21; App. M: Whetsell Aff., paragraph 21).

On August 26, 1991, Teledyne, the URW and Local 99 signed a PCA which gave up Petitioners' contractual right to severance pay. (App. KK). Three Hundred Fifty-Nine (359) Teledyne hourly employees were forced to request a lump sum pension, thereby becoming ineligible for retiree health insurance. (App. L: Adcox Aff., paragraph 19; App. M: Whetsell Aff., paragraph 19; App. LL).

A protest against the propriety of the August 22, 1991 vote was delivered to Local 99 on August 27, 1991. On that same date, Boggs denied the protest. (App. MM). A request for reconsideration was denied on September 4, 1991. (Apps. NN, OO).

On October 2, 1991, two further appeals to the URW were denied because Petitioners were no longer its members. (Apps. PP, QQ, RR). On October 8, 1991, Petitioners' appealed the URW's denial. (App. SS). No response was ever received. (App. L: Adcox Aff., paragraph 22).

Whether the PCA was signed or not, Teledyne was offering the lump sum distribution. It offered the lump sum in June 1991 to those with lump sum values in excess of $10,000.00. (App. AA). On October 31, 1991, Teledyne offered the lump sum to those plan participants with lump sum values under Ten Thousand Dollars ($10,000.00). (App. TT). The lump sum cost the pension plan an estimated 2.5 to 3 million dollars in post-tax lost earnings. (App. Q: Grimm depo., p. 37, lines 15-23, p. 38, lines 1-25; p. 39, lines 1-2). The market value of the assets of the pension plan as of January 1, 1992 was approximately thirty-five million dollars. (App. Z: Oddson depo., p. 15, lines 19-24). This was an over-funded plan, in the neighborhood of 13.5 million dollars. (App. Z: Oddson depo., p. 30, lines 10-20). When the plan closes, the assets revert to Teledyne. (App. Z: Oddson depo., p. 41, lines 15-21). While the lump sum cost the plan post-tax lost earnings, it saved Teledyne 8 to 9 million dollars

in severance pay. (App. S: Nelson depo., p. 60, lines 2-10; App. Q: Grimm depo., p. 27, lines 17-21; App. X).

Teledyne, the URW and Local 99 included the lump sum pension in the PCA to provide employees with "up-front cash" — not in addition to, but instead of the special distribution award. (App. I: Smith depo., p. 32, lines 1-17). Teledyne knew the employees faced significant tax penalties if they used the lump sum to live on, rather than "rollover" the lump sum amount. (App. I: Smith depo., p. 32, lines 18-25; p. 33, lines 1-3).

Though virtually no one was a member of the union on August 22, 1991 when the vote was taken, the Petitioners were told, when grieving the propriety of this vote, that they could not. They had no standing. They were not members anymore. (App. MM-SS).

SUMMARY OF ARGUMENT

The 241 petitioners respectfully pray that a Writ of Certiorari issue to review the decision rendered by the United States Court of Appeals for the Sixth Circuit entered on April 19, 1994.

If the petitioners could have filed their lawsuit in the Second, Third, Fifth, Seventh, Ninth, Tenth or Eleventh Circuits, those courts would have determined whether the plant closing agreement at issue was void. Because the Sixth Circuit refused to permit a district court to make a determination as to the validity or existence of a labor contract, the respondents are provided a windfall and the petitioners have lost hard earned severance pay.

The extent of Section 1337(a) jurisdiction over DFR claims, the contractual right to vesting of severance and the application of equitable estoppel to unfunded ERISA plans are issues that need the attention of this Honorable Court.

If the decision of the Sixth Circuit is allowed to stand, ERISA and federal labor law will provide no protection to employees within its jurisdiction. The decision below begs review and reversal by this Honorable Court.

I. Whether a federal court has jurisdiction to determine the validity or existence of a labor agreement.

A. A split in the Circuits as to whether a federal court has jurisdiction to determine the validity or existence of a labor agreement necessitates review of this case to provide uniformity of federal law.

Petitioners urge this Court to grant certiorari to provide uniformity of federal court jurisdiction to determine the validity or existence of a labor agreement. In this case, the Sixth Circuit held that a PCA precluded the court from determining Respondants' liability for Petitioners' claims for severance under Section 502(a)(1)(B) of ERISA, 29 U.S.C. 1132(a)(1)(B), and Section 301 of the LMRA, 29 U.S.C. 185(a).

The court could not "look behind" that agreement because it contained a release. The release and *Heussner v. National Gypsum Co.*, 887 F.2d 672 (6th Cir. 1989), the lower courts held, were dispositive.

In *Heussner*, the Sixth Circuit declined to extend Section 301 jurisdiction to determine the validity of a CBA negotiated prior to the expiration of the previous CBA. *Id.* at 676. In *Heussner*, the plaintiffs lost their jobs after a new CBA went into effect. *Id.* at 674. They sued for the larger severance award in an old agreement and challenged the validity of the new one. *Id.* While the *Heussner* court declined to confer jurisdiction to determine the validity of the superseding CBA, it noted that the existence of a contract was a distinct issue from deciding disputes based on interpretations of its validity. *Id.* at 676.

This distinction was discussed, in context of *Heussner*, in *Central Transport v. Int'l Bhd. of Teamsters*, 805 F.Supp. 26 (E.D. Mich. 1992). In *Central Transport*, the court, mindful of *Heussner*, held that district courts retain jurisdiction under Section 301 to determine whether an agreement exists. *Id.* at 28.

The Sixth Circuit's interpretation of federal court jurisdiction over labor agreements gives carte blanche to employers and unions to strong-arm employees out of ERISA protected benefits. No matter that the agreement unlawfully divests employees of welfare benefit rights, if there is an agreement on paper — not just a collective bargaining agreement, but any agreement — no court can look into it. The agreement divests a court of jurisdiction. The First and Fourth Circuits agree, although the Fourth Circuit grants jurisdiction if the plaintiff claims a valid CBA exists. *See*, *Hernandez v. Nat'l Packing Co.*, 455 F.2d 1252, 1253 (1st Cir. 1972); *A.T. Massey Coal Co. v. Int'l Union, United Mine Workers*, 799 F.2d 142, 146 (4th Cir. 1986), *cert. denied*, 481 U.S. 1033, 107 S.Ct. 1964 (1986).

However, the Second, Third, Fifth, Seventh, Ninth, Tenth and Eleventh Circuits hold otherwise. *See*, *Kozera v. Westchester-Fairfield Elec. Contractors*, 909 F.2d 48, 52 (2nd Cir. 1990), *cert. denied*, 498 U.S. 1084, 111 S.Ct. 956 (1991); *Mack Trucks, Inc. v. Int'l Union, UAW*, 856 F.2d 579, 590 (3d Cir. 1988), *cert. denied*, 489 U.S. 1054, 109 S.Ct. 1316 (1989); *United Steelworkers v. Rome Indus., Inc.*, 437 F.2d 881, 882 (5th Cir. 1970); *I.B.E.W., Local 481 v. Sign-Craft, Inc.*, 864 F.2d 499, 502 (7th Cir. 1988); *Rozay's Transfer v. Local Freight Drivers, Local 208*, 850 F.2d 1321, 1326 (9th Cir. 1988), *cert. denied*, 479 U.S. 1065, 109 S.Ct. 1768 (1989); *McNally Pittsburgh, Inc. v. Int'l Ass'n of Bridge Workers*, 812 F.2d 615, 618-19 (10th Cir. 1987); *Bd. of Trustees v. Universal Enters.,Inc.*, 751 F.2d 1177, 1184 (11th Cir. 1985). These Courts all permit a district court to determine the validity of a CBA "as part of the power to determine whether there has been a breach." *Kozera*, 909

F.2d at 52. In overruling *NDK Corp. v. Local 1550*, 709 F.2d 491 (7th Cir. 1983), the Seventh Circuit held that Section 301(a) encompasses claims "asserting either a violation of the contract or questioning its validity" as in many cases "either label could readily apply." *I.B.E.W., Local 481*, 864 F.2d at 502.

Petitioners urge this Court that review of this case is necessary to provide uniformity throughout the Circuits and, therefore, equal protection to employees, employers and unions.

B. A plant closing agreement is void where there were no union members at the time of the vote, the vote was held in violation of the union constitution, no consideration was provided for the rights given away under the agreement, and the agreement is unconscionable.

1. There were no union members to vote on the Plant Closing Agreement.

It is undisputed that the union issued HW cards to its members in July 1991. It takes parties to make an agreement. The only union members voting in August 1991 were a handful of Local 99's officers. The unions' actions "forfeited all rights and privileges in the local union and the URW" of the Petitioners. The subsequent vote on August 22, 1991 was sufficiently tainted that the PCA must be found void as a matter of law. Ramifications of the unions' actions further support a finding that the PCA is void in that it is more than likely, considering that it was voted down twice before, that issuing the HW cards was the only reason that the agreement received a majority vote in August 1991. The members of the URW and Local 99 had rejected the proposed agreement in June and July.

When Petitioners attempted to file grievances with the unions relative to the PCA, they were told that they could not because they had no standing. If Petitioners had no standing to grieve the events leading up to and surrounding the vote on the

PCA, then surely they had no standing to vote in August 1991 and the agreement is void as a matter of law.

2. The vote was held in violation of the union constitution.

The URW Constitution states that a question can be reconsidered only by a majority of the members present at a regular meeting of the local union. There were no union members in August 1991. So long as there were eleven or more members, the union by-laws required a regular monthly meeting. The HW cards reduced membership to five. There were no meetings, special or regular. The members of the union rejected the agreement twice. In violation of the union constitution, they were never again contacted to attend a meeting to discuss a third vote or the issues contained in the PCA. The August 22, 1991 vote was held in violation of the URW constitution and, therefore, the PCA is void.

3. The Plant Closing Agreement is void for lack of consideration.

The Sixth Circuit held that the consideration in this case was avoidance of litigation in exchange for a lump sum pension. However, Teledyne was offering the lump sum prior to the PCA and continues to offer it to those employees to whom it was unavailable under the PCA. The PCA had no effect on the lump sum offering. The lump sum was not consideration to the Petitioners. The lump sum, by its inherent tax penalties and loss of health insurance, hurt more than it helped. During effects bargaining, Teledyne had offered to enhance everyone's pension by twelve percent. That offer was not part of the PCA.

Petitioners were entitled to both severance and their pension. While Petitioners never got the twelve percent pension enhancement offered by Teledyne, Appendix X gives a good picture as to what the Petitioners lost. At the unions' request, Teledyne calculated the amount of the service award available

for each employee under the special distribution provision in the blue book. Teledyne also calculated the amount of the lump sum pension for each employee.

No matter which amount was larger in a given case, all of the Petitioners lost all of their severance award. They were entitled to both — severance to live on, pension for retirement. This forfeiture of severance pay occurred some two months after this benefit was earned and due. No accord and satisfaction can be found where the Petitioners received nothing under the PCA and lost their most significant benefit. Basic contract principles render the PCA void for lack of consideration.

4. The Plant Closing Agreement is void because it is unconscionable.

The PCA is unconscionable. There was not even a pretense as to compromise on the severance pay benefits to which Petitioners were entitled. Teledyne took the unreasonable stance that no one was entitled to the special distribution even though such an interpretation made the benefit illusory. The lump sum pension that Petitioners were forced to take was not bargained for by the union. The agreement included a lump sum pension to give employees "up-front cash". Teledyne was offering the lump sum months before the PCA was approved and continues to offer it to those who were ineligible previously. There was no incentive to Petitioners to take the lump sum. But there were significant tax penalties in taking the pension "up-front". Using the pension to live on was a disadvantage as much as it was, without severance pay, a necessity. And anyone choosing the lump sum lost retiree health insurance. Teledyne's incentive was that those electing lump sum were ineligible to obtain company sponsored health insurance coverage, resulting in a substantial monetary savings to Teledyne, as well as getting participants out of an overfunded pension plan.

Teledyne's position, that severance pay was due to no one, had no rational basis. Teledyne took an unreasonable position

throughout effects bargaining. Teledyne's conduct, and the terms it imposed, were "onerous, oppressive and one-sided". The agreement is unconscionable.

II. Whether 28 U.S.C. Section 1337(a) confers jurisdiction over a claim against a union for breach of its duty of fair representation where the court has dismissed a breach of contract claim against the employer.

A. 28 U.S.C. 1337(a) provides jurisdiction over Petitioners' DFR claim against the union.

With or without a breach of contract claim against Teledyne, there is a DFR claim against the unions. The Court below held that without the breach of contract claim, Petitioners could not pursue their DFR claim against the unions because the two claims were interdependent. In *Storey v. Local 327, Int'l Bhd. of Teamsters*, 759 F.2d 517 (6th Cir. 1985), the Sixth Circuit held that claims against a union for a DFR breach are within the jurisdiction of federal courts, even without a claim for breach of contract against the employer. 28 U.S.C. 1337(a) provides jurisdiction. *Id.* at 523.

The Petitioners, as did the plaintiffs in *Storey*, invoked 28 U.S.C. 1337(a) in their Complaint. So if the PCA precludes a claim for breach of contract against Teledyne, 28 U.S.C. 1337(a) and 29 U.S.C. 159(a) provides jurisdiction over Petitioners DFR claim against the unions.

In declining jurisdiction under 1337(a), the Courts below again relied upon *Heussner, supra*, that a district court has no jurisdiction over claims based on a superseded labor agreement. The *Heussner* court, however, noted that those plaintiffs, unlike the Petitioners, relied solely upon 29 U.S.C. 185 for jurisdiction. *Heussner*, 877 F.2d at 678.

Petitioners request that this Court grant review of this case to determine whether 28 U.S.C. 1337(a) provides jurisdiction over a DFR claim where a breach of contract claim against the

employer has been dismissed by the court, but the evidence creates genuine issues of fact as to the unions' DFR breach.

B. The unions' actions breached its duty of fair representation.

The Sixth Circuit assuming, *arguendo*, jurisdiction under Section 1337(a) over Petitioners' DFR claim, found that the facts did not support a breach by the unions. Such a finding clearly runs amiss of the parameters set by this Court with respect to DFR claims. The duty of fair representation is designed to protect individual employees and ensure an effective means of protecting their own interests. *Delcostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 164 n.14, 103 S. Ct. 2281, 2291 n. 14 (1983).

The duty of fair representation is "a bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law." *Vaca v. Sipes*, 386 U.S. 171, 182, 87 S.Ct. 903, 912 (1967). A union owes its members a duty to represent them adequately, as well as honestly and in good faith. *Air Line Pilots Ass'n Int'l v. O'Neil*, 499 U.S. 65, 111 S.Ct. 1127 (1991). In *O'Neil*, this Court held that there is a duty of adequate representation, in that "a union's conduct must also be within a wide range of reasonableness." *Id.*

The Petitioners were not fairly represented by their unions with respect to the bargaining agreements governing their employment, a proposed plant sale and the plant closing. The unions put an end to a sale of the Hartville plant in December 1990 by telling its members that the sale would end their blue book right to severance pay.

Six months later, when its members were losing their jobs because the plant was not sold, the unions pushed its members to approve a PCA that gave up their rights to severance pay. The unions were able to get enough votes to approve the PCA only

after repeatedly pressing its members to approve the agreement, terminating the members' rights and privileges and refusing to permit any discussion about, or opposition to, the PCA prior to the vote.

The PCA was rejected by a vote of 209 to 143 on June 14, 1991. Within days, Local 99 contacted its members by telephone and scheduled a meeting to determine whether the membership wanted to vote again. On June 28, 1991, the union membership unequivocally rejected another vote.

In July 1991, the unions sent its members HW cards, terminating all rights and privileges in the URW and Local 99. The issuance of these cards was not accidental. Even though required by the URW Constitution, the membership was never contacted again to attend a meeting to discuss a third vote or the issues contained in the PCA.

The PCA voted on August 22, 1991 contained two minor changes which were communicated via letter, without a meeting or a revised PCA. The letter confused many of the ex-employees, and by that time ex-union members, into believing that the August 22, 1991 vote was only to approve those minor changes, not the PCA itself.

Petitioners were entitled to representation by unions aware of the essential elements of the CBA and therefore able to advise its members regarding those rights. If Petitioners had no contractual right to severance pay, and the Sixth Circuit held that the contract says they were not, then the unions' misstatements in the Fall of 1990 through June 1991 were so outrageous as to violate its duty of fair representation.

If the unions were correct in its representations to Petitioners, that those employees not eligible for an immediate pension were entitled to the eight to nine million dollars in severance pay as calculated by Teledyne, then the union violated its duty in negotiating the severance issue at all, let alone receiving no

consideration for giving up this extraordinarily valuable benefit. The parties were in effects bargaining to determine the effect of the shutdown. A plant shutdown was a one-time thing, already covered by the blue book. As far as the special distribution award was concerned, there was nothing to negotiate. By taking the position it did, Teledyne simply served notice that it intended to breach the agreement.

Teledyne's interpretation was unreasonable in light of the terms of the agreement; unreasonable in light of the nature and purpose of severance pay; unreasonable in light of the company's and unions' past practice. It was unreasonable and the union acceded to it without getting anything in return for the millions of dollars given up.

A chief concern of the union representatives was losing retirees' medical insurance. However, retirees are not represented by the union. *Allied Chem. & Alkali Workers Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181 n. 20, 92 S.Ct. 383, 398, n. 20 (1971). The union represents those who are in the bargaining unit. *Anderson v. Alpha Portland Industries, Inc.*, 727 F.2d 177, 181 (8th Cir. 1984), *aff'd en banc*, 752 F.2d 1293, *cert. denied*, 471 U.S. 1102, 105 S.Ct. 2329 (1985).

The union had an obvious conflict of interest between the retirees' health insurance and Petitioners' severance. The union sacrificed the interests of those to whom it owed a statutory duty of fair representation, for those to whom it did not. The union should not have done so. It probably did not have to do so.

Whether the retirees' benefits were vested or not is not the issue. The point is, the union does not represent the retirees. In sacrificing Petitioners' interests to those of the retirees, the union violated its duty of fair representation.

The union promised to fight Teledyne. It fought its own membership. The union would not accept the first two votes. It terminated its membership. In violation of its Constitution, it

stopped the meetings, it prohibited discussion or opposition, it scheduled a third vote without a meeting or even providing a revised copy of the PCA.

A review of this case is necessary for this Court to determine federal court jurisdiction over DFR claims under 28 U.S.C. 1337(a) and to edify a union's duty of fair representation under federal labor law.

III. Whether a union member's vested right to severance pay is extinguishable by a labor agreement absent the union member's consent.

The Sixth Circuit, upon analysis of the special distribution provision of the blue book, determined that the benefit was illusory - that five years employment was necessary for entitlement and at the same time, five years employment precluded one from entitlement to severance.

A severance pay plan is an ERISA welfare benefit plan. *Adams v. Avondale Indus., Inc.*, 905 F.2d 943, 947 (6th Cir. 1990), *cert. denied*, 498 U.S. 984, 111 S.Ct. 517 (1990); *Brown v. Ampco-Pittsburgh Corp.*, 876 F.2d 546, 551 (6th Cir. 1989). It is a welfare benefit plan, even if unfunded and even if the employer fails to follow the formal requirements of ERISA. *Brown* at 551, *citing, Blau v. DelMonte Corp.*, 748 F.2d 1348, 1352 (9th Cir. 1984), *cert. denied*, 474 U.S. 865, 106 S.Ct. 183 (1985). Such a plan is not subject "to the elaborate vesting requirements applicable to pension plans." *Id.* But it can be vested. Whether or not it is depends upon the plan documents. *In re White Farm Equipment Company v. White Motors Corp.*, 788 F.2d 1186, 1193 (6th Cir. 1989).

Welfare plans are not subject to ERISA vesting requirements, but "an employee's vested right to such benefits is a matter of contract." *Garavuso v. Shoe Corp. of America Ind., Inc.*, 709 F. Supp. 1423, 1430 (S.D. Ohio 1989), *aff'd w/o opinion*, 892 F.2d 79 (6th Cir. 1989).

As a matter of contract, the parties may determine whether the benefits are vested or terminable. *In re: White Farm Equipment Co.* at 1192. One must construe the language of the documents and the intent of the parties. *Id.* at 1193.

Once a welfare benefit plan is conferred contractually, ERISA governs. *Thonen v. McNeil Akron, Inc.*, 661 F.Supp. 1252, 1265-67 (N.D. Ohio 1986), *modified, UAW v. Park-Ohio*, 661 F.Supp. 1281, 1300-01 (N.D. Ohio 1987), *aff'd in part, rev'd in part, remanded* 876 F.2d 894 (1989). Under ERISA, the employer must provide employees with the "plan originally envisioned." *UAW v. Park-Ohio*, 687 F.Supp. 338, 341 (1987).

Severance pay serves to cushion the impact of unemployment. It also rewards past service. *Callahan v. Rouge Steel Co.*, 941 F.2d 456, 457 (6th Cir. 1991). Severance awards, like retirement benefits, "are a form of deferred compensation." See *United Paper Workers v. Muskegon Paper Box*, 704 F.Supp. 774, 776 (W.D. Mich. 1988). Unlike retirement benefits, they serve in part as unemployment benefits. *Garavuso*, 709 F.Supp. at 1428.

The blue book provided Petitioners' with a contractual right to receive severance pay. The right to that pay became vested by performance on the Petitioners' part. That performance occurred over the years before the plant shut down. Anyone with five or more years of service was eligible. When the plant shut down in June 1991, the triggering event occurred. Once vested, the Petitioners' entitlement to this benefit could not be forfeited by the unions under a PCA.

Teledyne's interpretation of the blue book provision, adopted by the Sixth Circuit, took the special distribution off the books. To qualify for the distribution, an employee had to have five or more years of service. Any employee with five years of service was vested for a deferred pension. Teledyne's position was that anyone who had the years to be vested for severance pay could not get it.

Interpretations that make a promise illusory are rejected. "As in all contracts, the terms of a collective bargaining agreement should be construed so as to render none nugatory and to avoid illusory promises." *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1293 (6th Cir. 1991); *See also, Aquin v. Bendix Corp.*, 637 F.Supp. 657, 661 (W.D. Mich. 1986) (severance pay plan).

The Sixth Circuit's Interpretation, that "eligible for a pension" meant "eligible for an immediate or deferred pension," disregards the purpose of severance pay. Severance pay is designed to "alleviate hardship resulting from loss of employment * * *." *Aquin* at 663. The hardship is not alleviated because an employee may get a pension some years later. Nor does ERISA envision forcing employees to take lump sum pension to live on in lieu of severance pay.

In June of 1988, Teledyne's Human Resources Department posted a list prepared in connection with the 1988 production line transfer to Tennessee. It describes itself as a "list of 100 employees * * * who will be eligible to elect a severance allowance of $10,000.00 each * * *." It identifies the employees eligible for severance pay and gives their dates of service. The dates range back to 1961; years of service are from five to twenty-seven years. No one on this list was not vested for deferred pension benefits.The "Severance Pay Allowance" to those employees stated that accepting severance pay and voluntarily quitting terminated all rights as an employee "except that vested pension rights, if applicable, will be maintained."

The severance pay provision in the blue book was understood by the unions as providing severance pay to all who were not eligible for an immediate pension. Teledyne calculated Petitioners' severance pay based upon this same interpretation. Petitioners' right to the severance pay under the blue book vested on June 15, 1991 when the plant closed. Surely these facts precluded Summary Judgment on Petitioners' claim that they

held earned rights to severance under the blue book agreement. Assuming Petitioners' rights to severance pay had vested, then the question which requires this Court's guidance is whether a labor agreement can extinguish a vested right to an unfunded welfare benefit plan. Petitioners urge this Court to review this issue not only on their behalf, but in the interests of all union members.

IV. Whether the doctrine of promissory estoppel is applicable to claims for severance pay and would preclude Summary Judgment where union members reasonably relied on a contract provision providing severance upon plant closing, the employer was silent upon the unions' representations that employees would be entitled to severance pay under the contract provision, the employer's calculation of severance was based upon the contract provision and the employer's and unions' past practice provided severance to employees who were laid off due to a permanent closing.

A. The doctrine of promissory estoppel should be applicable to severance pay plans.

The Court below held that Petitioners did not establish that representations were made by Teledyne upon which Petitioners relied.

Federal courts may fashion "federal common law" under ERISA, including equitable estoppel. *Armistead*, 944 F.2d at 1298. Estoppel can hold an employer to a promise to continue to provide welfare benefits. *Id.* at 1298-99.

In *Armistead*, the employees took early retirement in reliance on a promise of retiree insurance benefits. *Armistead* held that the company was estopped later from denying the benefits. The employer violated both Section 301 and ERISA by terminating the benefits in violation of the CBA. *Id.* at 1298.

In *Armistead*, the benefit was insurance. However, the principle applies to severance benefits as well. In applying estoppel principles to ERISA claims, *Armistead* followed a Seventh Circuit case that did so with respect to severance pay benefits. *Id.* at 1300.

The Seventh Circuit held the doctrine of promissory estoppel applicable to unfunded welfare benefit plans. *Black v. TIC Inv. Corp.*, 900 F.2d 112 (7th Cir. 1990). In *Black*, the Seventh Circuit applied equitable estoppel in a non-union setting to prevent the defendant from denying the plaintiffs' eligibility for severance pay. Like *Armistead*, the *Black* court limited the application of estoppel to unfunded welfare benefit, and not pension, plans. *Id.* at 115; *Armistead* at 1298-1300.

Whether the doctrine of equitable estoppel should apply to welfare benefit plans, particularly severance, is an important question of federal law which should be addressed by this Court. Employees act in reliance upon severance plans, particularly those in writing and even more particularly, those under a CBA. After many years of employee reliance, employers should not be able to change the terms of such plans at the time the employee is due to receive this benefit.

B. Under the doctrine of promissory estoppel, genuine issues of fact precluded summary judgment on Petitioners' ERISA claim.

Petitioners relied on the collectively bargained pension, insurance and service award agreement and their unions' representations as to their entitlement thereunder, to provide them with severance pay when the plant closed. Petitioners also relied on Teledyne's representations and actions.

In the fall of 1990, when the union put an end to the sale of the Hartville plant to Edgewater by telling its members that they would lose their severance pay if the plant was sold, Teledyne said nothing. At no time prior to effects bargaining did

Teledyne ever inform the union or its members that the severance provision entitled no one to severance pay. The union, including its veteran twenty-five year expert on pension and welfare benefits, Jim Kennedy, believed that the blue book provided severance pay upon plant closure to all employees who were not eligible for an immediate pension.

During effects bargaining, Teledyne calculated severance pay for each and every hourly employee according to the formula in the blue book.

Teledyne had provided $10,000.00 severance pay to each employee who lost their job due to a department closure as late as 1988. Teledyne never made any written changes to the blue book. Everyone — the company, the union, the members of the union— regarded severance as available to all employees who worked until the plant closed and who were not immediately entitled to pension benefits. Teledyne, by its actions, inaction, the blue book and past practice, represented to Petitioners that they would receive severance pay upon plant closure.

Based upon the unions' representations, and Teledyne's silence, as to their entitlement to severance pay, the members voted down the CBA with the Edgewater Group and lost job security in order to preserve their right to the special distribution. Petitioners kept the Hartville facility in operation because they believed that to receive severance pay, they had to work up until the plant closed.

Teledyne was well aware of Petitioners' reliance upon the severance pay. Teledyne was well aware that the unions believed Petitioners were entitled to severance pay under the blue book provision. Teledyne calculated Petitioners' severance based upon that provision.

Equity demands that Teledyne be estopped from denying Petitioners' claims for severance benefits. Petitioners seek review of the lower Court's decision that they did not establish

issues of fact as to representations by Teledyne upon which they relied. A review of this case would provide clarification of the application of equitable estoppel to unfunded ERISA plans and guidelines as to the facts necessary to establish such a claim.

CONCLUSION

This is an appropriate case for this Court to address unresolved issues critical to ERISA and federal labor law. Whether a federal court has jurisdiction to determine the validity or existence of a labor agreement is answered differently by the Circuit Courts of Appeal. Further, defining federal court jurisdiction under 28 U.S.C. 1337(a) over DFR claims and providing guidance as to federal common law principals of vesting of unfunded ERISA plans and the application of promissory estoppel where vesting has occurred are questions ripe for review. Petitioners respectfully request this Court to grant their Petition for Writ of Certiorari.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN R. ADCOX, et al.,

Plaintiffs,

- vs -

TELEDYNE, INC., et al.,

Defendants.

Judge Sam H. Bell
CASE NO. 5:91CV2521

ORDER

Currently pending before the court are three motions for summary judgment pursuant to Federal Rule of Civil Procedure 56. As the analysis relevant to the separate motions is the same, the court will discuss all of the motions herein. The first motion for summary judgment was filed by the United Rubber, Cork, Linoleum and Plastic Workers of America International Union (the "URW") and URW Local 99 (collectively "Union defendants") on June 17, 1992. (Docket #37.) Teledyne, Inc., and Teledyne Industries, Inc., Teledyne Monarch Rubber Division (collectively "Teledyne defendants") followed suit on August 31, 1992. (Docket #55.) Finally, plaintiffs, former employees at Teledyne's Hartville, Ohio plant and members of Local 99, filed a motion for summary judgment against both the Union and Teledyne defendants on October 14, 1992. (Docker #66.) All of the parties hereto have engaged in filing responses and replies to these motions. The parties have also filed hundreds of pages of exhibits and depositions to be considered in conjunction with the motions.

The underlying complaint in this case was filed on December 13, 1991. The complaint sets forth four separate counts. In

the first count, plaintiffs bring a hybrid Labor Management Relations Act § 301, 29 U.S.C. § 185, claim against the Union and Teledyne defendants. The remaining three counts allege violations of provisions of the Employee Retirement Income Security Act (ERISA) and are brought pursuant to ERISA section 502 which provides for civil actions to enforce the act. 29 U.S.C. 1132.

BACKGROUND

Plaintiffs in this matter lost their jobs when Teledyne shut down its Hartville, Ohio plant on June 16, 1991. Prior to the closing, plaintiffs worked under a collective bargaining agreement between Local 99 and Teledyne which took effect in 1988 and terminated June 16, 1991 — simultaneous with the official closing of the plant. The 1988 collective bargaining agreement contained a Pension, Insurance and Service Award Agreement. This agreement included provisions for employer contributions to retiree health insurance and for payment of a service award to certain employees who lost their job and were not yet eligible for a pension. The service award functioned in many respects like severance pay.

Beginning in January, 1991, Teledyne and the Union engaged in effects bargaining to resolve the impact of the proposed closing on the employees. During effects bargaining, the Union initially argued that all retirees were entitled to life-long health insurance. The Union also claimed that all employees who were otherwise eligible for the service award and were not eligible for *immediate* pension benefits were entitled to a service award. Teledyne disagreed. Teledyne countered that retiree health insurance was tied to the collective bargaining agreement and that when the agreement lapsed, so to did the obligation to fund retiree health care. Teledyne also claimed that employees with vested deferred pension benefits were nonetheless eligible for a pension and therefore not entitled to a service award.

The union faced the near certainty of lengthy litigation and the apparent possibility of losing not only the service award, but also retiree health insurance. Under the circumstances, the Union negotiated a compromise. The service award was dropped from the Plant Closing Agreement. Teledyne agreed therein to permit lump sum distributions of pension benefits as a way to give employees access to immediate cash. Teledyne also agreed to life-time retiree health insurance subject to a cap on the premium paid by Teledyne and to provide short-term health coverage to terminated employees with a cash buy-out option. The plant closing agreement also included a broad release provision terminating all Teledyne liability under prior agreements, including the Service Award agreement.

The Union membership rejected the plant closing agreement on June 14, 1991. On June 28, the membership voted not to revote on the proposed agreement. In July, the Union issued Honorary Withdrawal and Transfer Cards to the members, apparently terminating their rights and privileges as members. Even so, the Union continued to pursue ratification of the proposed agreement. After a post card poll to determine interest in a re-vote, the Union scheduled a vote on August 22. The plant closing agreement was ratified at that meeting.

Thereafter, certain plaintiffs protested this result to the Local and to the International but were not satisfied. Plaintiff Adcox filed a complaint with the National Labor Relations Board which was apparently withdrawn before the Board took formal action. This litigation followed.

STANDARD OF REVIEW

In reviewing a motion for summary judgment, a court must consider the pleadings, related documents, evidence, and all reasonable inferences in a manner most favorable to the non-moving party. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 90 S.Ct. 1598, 86 L.Ed.2d 142 (1970); *Smith v. Hudson*, 600 F.2d

60 (6th Cir. 1979). Rule 56 provides, in relevant part, as follows:

> (c) . . .
>
> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.
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> . . .
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> (e) . . .
>
> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

Three Supreme Court cases have provided guidance as to the nature of the respective burdens allocated under Rule 56. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 106 S. Ct. 2052; 91 L.Ed.2d 202 (1986); *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). The ultimate burden lies with the non-moving party to show the existence of a genuine issue of material fact. "When the moving party has carried its burden under rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts . . . In the language f the Rule, the non-moving party must come forward with 'specific facts showing that there is a *genuine issue for trial.*' Fed. Rule Civ. Proc. 56(e)." *Matsushita*, 475 U.S. at 586-587 (emphasis supplied). "In our

view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322. The court in *Anderson* held that "the plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment. This is true even where the evidence is likely to be within the possession of the defendant, as long as the plaintiff had had a full opportunity to conduct discovery." *Anderson*, 477 U.S. at 257.

On the other hand, the moving party's burden under Rule 56 is lighter.

> Of course, a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact. But unlike the Court of Appeals, we find no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials *negating* the opponent's claim. On the contrary, Rule 56(c) . . . suggests the absence of such a requirement.

Celotex, supra, at 323 (emphasis supplied).

The Sixth Circuit Court of Appeals, in *Street v. J. C. Bradford and Co.*, 886 F.2d 1472 (6th Cir. 1989) recently reviewed court decisions and commentary regarding the impact of *Anderson*, *Celotex*, and *Matsushita* on summary judgment practice. The court concluded that a "new era" in summary

judgment practice has opened in the court system as a result of these opinions.

> Scholars and courts are in agreement that a "new era" in summary judgments dawned by virtue of the Court's opinions in these cases . . . On the whole, these decisions reflect a salutary return to the original purpose of summary judgments. Over the years, decisions requiring denial of summary judgment if there was even a suggestion of an issue of fact and tended to emasculate summary judgment as an effective procedural device.

Street, supra, at 1476.

The court enunciated the following "new era" principles, among others: as on federal directed verdict motions, the "scintilla" rule applies, *i.e.*, the respondent must adduce more than a scintilla of evidence to overcome the motion; the respondent cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must "present affirmative evidence in order to defeat a properly supported motion for summary judgment"; the trial court no longer has the duty to search the entire record to establish that it is bereft of a genuine issue of material fact. *Id.* at 1479-1480 (footnotes and citations omitted).

This discussion largely assumes that motions for summary judgment will be filed by defendants, not plaintiffs. In the instant case, one of the motions has in fact been filed by plaintiff, therefore, the court and the parties must be mindful of the fact that plaintiffs bear the burden of proving their case by a preponderance of evidence at trial. That burden will necessarily affect their burden for summary judgment purposes as well.

> In assessing the sufficiency of the evidence to sustain a particular inference, therefore, the court must also consider the burden of proof on the issue and where

> it will rest at trial. When the moving party does not have the burden of proof on the issue, he need show only that the opponent cannot sustain his burden at trial. *But where the moving party had the burden* — the plaintiff on a claim for relief or the defendant on an affirmative defense — *his must be sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party.*

William W Schwartzer, *Summary Judgment Under the Federal Rules: Defining Genuine Issues of Material Fact*, 99 F.R.D. 465, 487-88 (1984) (emphasis supplied; citations omitted) (quoted in *Calderane v. United States*, 799 F.2d 254, 258-59 (6th Cir. 1986).

LAW AND ANALYSIS

I. Count I.

A. District Court Jurisdiction Over Hybrid 301 Claims.

Federal courts are courts of limited jurisdiction. The authority of lower federal courts is circumscribed by the necessity of having both constitutional and congressional authorization to hear the case. *Insurance Corp. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982). This concern is so fundamental to the authority and operation of the federal judiciary that this court is compelled to notice the want of jurisdiction regardless of whether the issues is raised by the parties. *Liberty Mutual Inc. Co. v. Wetzel*, 424 U.S. 737, 740 (1976). In the instant case, the parties seem to assume the jurisdiction of this court. However, count one raises critical jurisdictional issues which must be resolved before it would be appropriate to resolve the merit-based arguments advanced in the parties' briefs.

According to Count I, "Teledyne failed to pay the Special Distribution as contained in the Pension Insurance and Service

Award Agreement thereby violating the CBA and made material misrepresentations upon which Plaintiff's detrimentally relied, which is actionable under Section 301 of the LMRA, 29 U.S.C. Section 185." Complaint ¶ 30. Count one further alleged that, "the URW's and Local 99 actions as stated herein were a violation of its duty of fair representation under Section 9(a) of the LMRA, 29 U.S.C. Section 159(a), and is therefore actionable under Section 301 of the LMRA, 29 U.S.C. Section 185, and/or 28 U.S.C. Section 1337(c)." Complaint ¶ 31.

Section 301 of the Labor Management Relations Act, cited in plaintiff's complaint, provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a). This provision is invoked to authorize district court jurisdiction over claims for breach of collective bargaining agreements.

The Union's duty of fair representation does not arise from or pursuant to a collective bargaining agreement. Rather, the Union's duty is derived from its statutory status as the exclusive bargaining agent for the unit. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 564 (1976). The duty of fair representation extends to all union activities, including contract negotiations. *Air Line Pilots Ass'n v. O'Neil*, 113 L. Ed. 2d 51, 58 (1991). A breach of that duty may but does not necessarily breach a collective bargaining agreement. In a suit for breach of duty where the Union is not alleged to have breached the contract, section 301 does not provide jurisdiction. *Smith v. Local N. 25, Sheet Metal Workers Int'l Ass'n*, 500 F.2d 741, 746 (6th Cir.

1974). Instead, jurisdiction exists pursuant to 28 U.S.C. § 1337. *Id.* at 748; *Storey v. Local 327, Intern' Broth. of Teamsters*, 759 F.2d 517,523.

Section 1337 provides: "The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies." 28 U.S.C. § 1337. While seemingly conferring broad jurisdiction, section 1337 adds nothing to an Act which has its own provision conferring jurisdiction. *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1015 (2d Cir. 1975). Therefore, while section 1337 may be invoked in a suit for breach of the duty of fair representation, it can not be used to expand the jurisdictional limits imposed by section 301 on suits for breach of the collective bargaining agreement.

Out of concern that by breaching its duty, a union might sanction an employer's breach of contract, the Supreme Court allows a hybrid section 301 claim. In such a claim, plaintiff must show that the Union breached its duty and that that breach led to the employer's breach of contract. *White v. Anchor Motor Freight, Inc.*, 899 F.2d 555, 559 (6th Cir. 1990). For example, while a court must generally defer to arbitrator's judgments, *Steelworkers v. Enterprise Corp.*, 363 U.S. 593, 599 (1960), an employee may sidestep the grievance process and directly sue his employer in federal court if, "the union refuses to press or only perfunctorily presses the individual's claim." *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652 (1965). "The union's breach of duty relieves the employee of an express or implied requirement that disputes be settled through contractual grievance procedures; if it seriously undermines the integrity of the arbitral process the union's breach also removes the bar of the finality provision of the contract. *Hines*, 424 U.S. at 567.

Rules regarding hybrid 301 cases are well established:

> [T]he two constituent claims in every hybrid 301 action — breach of collective bargaining agreement and breach of a union's duty of fair representation — are interdependent; if the first claim anchored in the employer's alleged breach of the collective bargaining agreement fails, then the breach of duty of fair representation claim against the union must necessarily fail with it.

White, 899 F.2d at 559. A hybrid 301 claim is only intended to permit employees to overcome the preclusive effect of the wrongful behavior of their exclusive bargaining agent. The hybrid 301 claim is not intended to expand the jurisdiction of the courts. Just as the substantive rules for a hybrid 301 claim are interpreted conjunctively, so too should the jurisdictional rules. Otherwise, section 1337's broad grant of authority may be abused to permit a court to hear a claim jurisdictionally prohibited by section 301. Such a result violates Judge Friendly's admonition in *Vencap*. Therefore, the fact that there is jurisdiction for the breach of duty claim against the union will not be a sufficient jurisdictional basis for the hybrid claim if there is also not separate authority under section 301 for the breach of contract claim.

B. Plaintiffs' Breach of Contract Claim is Not Cognizable Under Section 301.

To find that Teledyne's failure to pay the Special Distributions contained in the 1988 agreement is a breach, as alleged by plaintiffs, the court must first find that the provisions of the 1988 agreement were still in force. The release in the Plant Closing Agreement signed by Teledyne and the Union undercuts such a finding:

> [T]his Agreement is in full discharge and settlement of all Company obligations and Employee or Union claims under any agreement, including Service Award, Early Retirement benefit or any employment-

> related local, state or federal law, including, without limitation, ERISA, the National Labor Relations Act The Labor-Management Relations Act,The Labor Age Discrimination in Employment Act, and the Workers Adjustment and Retraining Notification Act, except for obligations arising under this Agreement or health-related claims such as workers' compensation claims.

Plant Closing Agreement at ¶ 10. So long as the Plant Closing Agreement is valid, plaintiffs can not prevail on their claim for benefits pursuant to the superseded collective bargaining agreement. In essence, plaintiffs' first claim asks this court to determine the validity of the respective agreements.

The instant situation is analogous to that addressed by the Sixth circuit in *Heussner v. Nat'l Gypsum Co.*, 887 F.2d 672 (6th Cir. 1989). In that case, employees were assured severance pay under a 1984 collective bargaining agreement scheduled to expire May 1, 1987. National Gypsum claimed that through the sale of assets to a third party, the severance pay requirement could be avoided. Rather than entirely lose the benefit, the United Steel Workers negotiated a new agreement which went into effect before the old agreement expired. The case was filed by disgruntled employees terminated by National Gypsum's successor and given severance pay pursuant to the 1987, not the 1984, agreement. *Id.* at 674. The first claim in that case was similar to plaintiffs breach of contract claim in the instant case -- a section 301 claim against the employer seeking rescission of the new agreement to permit recovery of the benefits promised in the old agreement. *Id.* at 675-76.

The Circuit upheld the dismissal of the claim based on a narrow interpretation of section 301. "[W]e are reluctant in this case to expand our interpretation of Section 301(a) to give district courts jurisdiction over questions of the *validity* of collective bargaining contracts." *Id.* at 676 (emphasis supplied).

In that case, as in this case, the claims under a predecessor agreement could not be pursued until the successor agreement was *invalidated*. Since section 301 does not authorize such an exercise by this court, the first component of plaintiffs' hybrid 301 claim fails, so the entire hybrid 301 claim must be dismissed.

II. Count II.

Plaintiffs seek to achieve through pension law what they are denied under labor law — district court review of the validity of the collectively bargained agreements. Plaintiffs second count is a claim for collection of benefits filed pursuant to 28 U.S.C. § 1132(a)(1)(B). This claim is also premised on the provisions of the superseded collective bargaining agreement. However, section 1132 only authorized claims in federal court while the collective bargaining agreement is in force. *Id.* at 677. Like the district court in *Heussner*, this court lacks jurisdiction over ERISA claim premised on the invalidity of the superseding collectively bargained contract.

III. Count III.

Count three alleges that Teledyne breached its fiduciary duty because it "made material misrepresentations to Plaintiffs, upon which Plaintiffs relied to their detriment; failed to act in accordance with plan documents; acted in a manner adverse to the Plaintiffs' interests as beneficiaries; and terminated Plaintiffs interests in its benefit plan." Complaint at ¶ 38.

Fiduciary duties are codified at 29 U.S.C. § 1104. As recently noted by our Circuit, "breach of these duties constitutes a violation of 29 U.S.C. § 1109 . . ." *Flacche v. Sun Life Assur. Co. of Canada (U.S.)*, 958 F.2d 730, 733 (6th Cir. 1992). It is the violation of section 1109 which supports any claim under 29 U.S.C. § 1132(a)(2). Section 1132, cited by plaintiffs, permits civil actions to be brought by a beneficiary "*for appropriate*

relief under section 1109 of this title," 29 U.S.C. § 1332(a)(2) (emphasis added). 29 U.S.C. § 1109 provides, in pertinent part:

> Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by this subchapter shall be personally liable *to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary*, and shall be subject to such other equitable and remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for violation of section 1111 of this title.

29 U.S.C. § 1109(a) (emphasis added).

In the instant case, it is clear from both the pleadings and briefs that plaintiffs seek recovery on their own behalf, not on behalf of the plan. *See e.g.*, Complaint, *supra*; Plaintiffs' Motion for Summary Judgment at 24 ("*Plaintiffs' Are Entitled to Severance Under the Pension, Insurance and Service Award Agreement.*") (emphasis supplied). Such a cause of action is unavailable, however, because § 1109 only permits recovery to inure to the ERISA plan, not to individual beneficiaries. The Sixth Circuit has recently commented that:

> [S]uits under ERISA for breach of fiduciary duty arise under 29 U.S.C. § 1132(a)(2), which allows beneficiaries of a plan, like [plaintiff], to seek relief under 29 U.S.C. § 1109.
>
> . . .
>
> As the language regarding fiduciary duty suits in section 1109 makes clear, ERISA contemplates that breaches of fiduciary duties injure the plan, not individual beneficiaries, and any recovery thus goes to the

plan. As the Supreme Court noted in *Massachusetts Mutual Life Insurance Co. v. Russell*, 473 U.S. 134 (1985):

> A fair contextual reading of the statute makes it abundantly clear that [the] draftsman [of § 1109] were primarily concerned with the possible misuse of plan assets, and with remedies that would protect the entire plan, rather than with the rights of an individual beneficiary.

Id. at 142. We recently decided a case by expressly following *Russell* and declaring that "1109 authorizes relief only to the plan itself, not to individual beneficiaries." *Farrell v. Automobile Club of Michigan*, 870 F.2d 1129, 1133 (6th Cir. 1989). *See also Mehl v. Navistar Int'l Corp.*, 670 F. Supp, 239 (N. D. Ill. 1987).

Bryant v. Int'l Fruit Product Company, Inc., 886 F.2d 132, 135 (6th Cir. 1989). A claim for breach of fiduciary duty is distinct from a claim for payment of benefits. The two claims are not interchangeable.

In *Bryant*, the court upheld the denial of a claim for breach of fiduciary duty because the plaintiff participants only sought recovery of their own behalf, and did not seek a return of funds to the plan in question. *Id.* The complaint therefore failed to state a cause of action for breach of fiduciary duty under ERISA. *Id.* An identical conclusion, must, of course, be reached in this case. Accordingly, count three is hereby dismissed.

IV. COUNT IV.

Last, plaintiffs bring their prayer pursuant to 29 U.S.C. § 1140. That statute provides in part:

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to

> which he is entitled under the provisions of an employee benefit plan . . . or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan.

29 U.S.C. § 1140. Plaintiffs claim that Teledyne's conduct coerced the ratification of the Plant Closing Agreement thereby interfering with their rights under the 1988 agreement. This claim misapprehends the meaning of section 1140. The legislative history, a previously interpreted by this Circuit, "reveals that the prohibitions were aimed primarily at preventing unscrupulous employers from discharging or harassing their employees in order to keep them from obtaining vested pension rights." *West v. Butler*, 621 F.2d 240, 245 (6th Cir. 1980). As Congress explained:

> [Sections 510 and 511] were added by the Committee in the face of evidence that in some plans a worker's pension rights or the expectations of those rights were interfered with by the use of economic sanctions or violent reprisals. Although the instances of these occurrences are relatively small in number, the Committee has concluded that safeguards are required to preclude this type of abuse from being carried out and in order to completely secure the rights and expectations brought into being by this landmark reform legislation.

S. Rep. No. 93-127, 93d Cong., 2d Sess., *reprinted at* 1974 U.S. Code Cong. & Admin. News pp. 4838, 4872 (*quoted in west*, 621 F.2d at 245). The nature of the abuses and safeguards intended by Congress are further clarified by the legislative history.

> Most collective bargaining agreements protect employees against discharge without good cause and provide effective enforcement machinery in arbitration proceedings whose results are enforceable under

> section 301 of the Labor-Management Relations Act. But roughly half of all pension participants are not unionized and so they lack protection. Especially vulnerable are managers and executives whose substantial pension potentialities provide an incentive to their discharge before vesting. The managers of the bill ought to think twice too. Discipline and discrimination can be so unpleasant as to amount to constructive discharge, a term used by the National Labor Relations Board. That can be the type of harassment which does not say that one is fired, but makes living such a hell that a person wishes he did not have to hang on to endure.
>
> In recognition of that problem, section 610 of S.4 as originally reported — made it illegal to "discharge, fine, suspend, expel [sic], discipline or discriminate" against plan participants to defeat rights under the act or a plan. The language parallels section 8(a)(3) of the national Labor Relations Act and should do the trick — but only if an adequate enforcement machinery exists.

119 Cong. Rec. 30374, *reprinted in* Legislative history at 1774-75 (Senator Hartke speaking) (*quoted in West*, 621 F.2d at 245). Section 8(a)(3) of the National Labor Relations Act to which Senator Hartke made reference makes it an unfair labor practice to discriminate "in regard to hire or tenure of employment or any term or condition of employment" to encourage or discourage union membership. 29 U.S.C. § 158(a)(3). Whatever form the employer's conduct takes, to violate section 1140, the conduct "must affect the individual's employment relationship in some substantial way." *Id.* at 245-46.

In the instant case, Teledyne's conduct could have no impact on the employment relationship because it was a foregone conclusion, undisputed by the parties, that plaintiffs were

to be terminated whether or not the plant closing agreement was ratified. In fact, the plant was closed and plaintiffs terminated prior to the actual ratification of the plant closing agreement. Moreover, the conduct of which Teledyne is accused — coercing a plant closing agreement waiving previously promising welfare benefits — only effects the terms of the pension plan, not the employment relationship as contemplated by Congress.

Plaintiffs' fourth count is also legally insufficient and must be dismissed.

CONCLUSION

National labor policy, as expressed by Labor-Management Relations Act section 301 does not extend to this court the authority to determine the validity of the Plant Closing Agreement. So long as this court is unable to question the validity of the superseding agreement, it is impossible for this court to consider Teledyne's liability under the predecessor agreement. This limitation has like effect in the context of a claim for benefits pursuant to ERISA. So long as the claim is based on an agreement which this court can not find was in force, the claim must be dismissed.

Plaintiffs' claims are, fundamentally, requests for benefits. No matter how plaintiffs attempt to couch these demands, they will not be able to escape the jurisdictional defects. The breach of fiduciary duty and interference with ERISA rights claims are inappropriate ways to seek a remedy otherwise denied.

Plaintiffs' motion for summary judgment is DENIED. The motions for summary judgment filed by Teledyne and the Union defendants are GRANTED.

IT IS SO ORDERED.

SAM H. BELL
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN R. ADCOX, et al.,

Plaintiffs,

- vs -

TELEDYNE, INC., et al.,

Defendants.

Judge Sam H. Bell
CASE NO. 5:91CV2521

ORDER

The court having filed its order of decision of the matters in this action, therefore, pursuant to Fed. R. Civ. P. 58, IT IS ORDERED that this action is hereby terminated.

IT IS SO ORDERED.

SAM H. BELL
U.S. DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN R. ADCOX, et al.,
Plaintiffs-Appellants,

v.

TELEDYNE, INC.; TELEDYNE INDUSTRIES, INC., TELEDYNE MONARCH RUBBER DIVISION; UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA INTERNATIONAL UNION; and UNITED RUBBER WORKERS LOCAL UNION NO. 99,
Defendants-Appellants

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OHIO

No. 93-3078

Decided and Filed April 19, 1994

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 24

ELECTRONIC CITATION:
1994 FED App. 0124P 9 (6th Cir.)
File Name: 94a0124p.06

Before: MILBURN and BOGGS, Circuit Judges; and CONTIE, Senior Circuit Judge.

BOGGS, Circuit Judge. A group of former Teledyne employees appeals the district court's granting of summary judgment to defendants-appellees in the employees' suit seeking lost welfare benefits and damages under both the Labor Management Relations Act (LMRA), 29 U.S.C. §§ 141 *et seq.*, and the

Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001 *et seq.* For the reasons discussed herein, we affirm.

I

Plaintiffs-appellants are former employees of defendant Teledyne Monarch Rubber, a division of defendant Teledyne, Inc., and, while employed by Teledyne, were represented by defendants United Rubber, Cork, Linoleum and Plastic Workers of America International Union and its Local Union No. 99. A collective bargaining agreement, which became effective January 1, 1988, and expired at midnight on June 15, 1991, governed the terms of their employment. Teledyne and the Union had also negotiated a Pension, Insurance and Service Award Agreement, which ran to June 15, 1985, but automatically renewed itself annually, unless either party gave notice of its desire to terminate the Service Award Agreement. The Service Award Agreement provided for service awards upon retirement and "special distribution" benefits on discontinuance of plant operations; the "special distribution" benefit functions essentially as severance pay.

In January 1991, Teledyne announced it would cease operations at its Hartville, Ohio, plant (where plaintiffs worked), sell the assets, and terminate the employees on June 15, 1991, the date when the labor agreement expired. Teledyne and the Union then engaged in "effects bargaining" from January through June 1991 to resolve the impact of the proposed closing on the employees. On April 5, Teledyne notified the Union that it desired to "terminate all agreements, including the Collective Bargaining Agreements, effective 12:01 a.m. the 16th of June, 1991."

During these negotiations, the Union demanded that Teledyne provide the employees with various benefits, including continuation of health insurance for eighteen months; immediate, unreduced early pension benefits for all employees

regardless of the length of service; and "special distribution" benefits based on the Service Award Agreement. Teledyne agreed to continue medical insurance for fourteen months after closure, but declined to increase pension benefits or lower pension eligibility requirements, declined to pay to any employee a Service Award Agreement benefit, and informed the Union that retiree medical benefits would cease on June 15, 1991.

The Service Award Agreement provided for the special distribution to be calculated on the basis of an employee's total earnings. The distribution was payable upon complete and permanent discontinuance of plant operations to each terminated employee with at least five years of service who was "not eligible for a pension under any pension plan" of Teledyne and who was not eligible for a service award for retirement. At the time of termination, each plaintiff had at least five years of service and each was entitled to a deferred vested pension under Teledyne's pension plan. During effects bargaining, the Union contended that "eligible for a pension" meant eligible for an immediate pension; Teledyne maintained that it meant eligible for *any* pension, including a deferred vested pension. Teledyne and the Union also disagreed as to whether the retiree medical benefit program was limited to the life of the collective bargaining agreement or to the life of each retiree.

As part of a tentative Plant Closing Agreement reached in early June 1991, Teledyne agreed to provide an immediate, lump-sum pension benefit option (thereby giving employees access to immediate cash); to pay the then-current premiums for a retiree medical program for the lifetime of each current retiree and each active employee who was eligible to begin receiving an immediate pension benefit on July 1, 1991, and who did not take the lump-sum pension benefit; to continue active employees' health insurance for fourteen months or buy out that insurance on a lump-sum cash basis; and to increase the earnings

permitted to recipients of certain pension benefits. The Union, as part of the compromise, agreed to a comprehensive release of claims, including a release concerning any Service Award Agreement benefits.

At Union meetings on June 14, June 15, and June 28, Union representatives explained to the employees the Plant Closing Agreement, including that there was substantial doubt whether the employees were entitled to the special distribution under the terms of the Service Award Agreement and that there was an equal chance of prevailing or losing in litigation. Dorothy Bixler, a union official and one of the plaintiffs-appellants, explained that if they received the special distribution it would be set off against their pension. The employees at the June 14 meeting voted not to ratify the Plant Closing Agreement. A subsequent telephone poll of employees showed that a majority of the employees contacted wanted another vote. However, at the June 28 meeting, held to decide whether there should be another vote, the majority voted against reconsideration of the agreement.

In July 1991, withdrawal cards were issued by the International to the members of Local No. 99, except to the officers. Members receiving such cards forfeit all rights and privileges in the Union. A withdrawal card is automatically issued to a terminated employee who has not applied for a dues waiver and enables the employee to have his membership rights and privileges restored if subsequently hired at another plant organized by the United Rubber Workers.

In early August, Teledyne increased its offer concerning the buy-out of health insurance from $500 to $600 for single coverage and from $1000 to $1200 for family coverage. The Union polled the membership through the use of postcards; a majority indicated that they wanted to reconsider the agreement. A vote by secret ballot was held on August 22, 1991, and the majority ratified the Plant Closing Agreement. The Agreement

was signed by the Union and Teledyne on August 26, effective retroactive to June 15, 1991. The Agreement has been fully implemented.

There is some dispute as to whether the Union constitution authorizes the procedures used (i.e., postcard polling and secret ballot without a meeting). Plaintiffs also claim that many of the voters thought they were voting on Teledyne's proposed changes, not the agreement as a whole; that the Union told them that if it were not approved, retirees would lose their health coverage, employees would not be able to get their vested pension money, and employees would not get their pension money at all if they insisted on receiving the special distribution; and that the Union denied them additional information and an opportunity to debate and organize opposition to the plan. A protest to Local No. 99 was denied, as was a request for reconsideration. Appeals to the International were similarly denied, because the appellants were no longer members.

Plaintiffs filed suit in December 1991, alleging that Teledyne's failure to pay the special distribution benefits was a breach of contract under § 301 of the LMRA and that the Union violated its duty of fair representation under § 9(a) of the LMRA (count I). Plaintiffs also asserted that the special distribution award was an employee welfare benefit plan under ERISA and that Teledyne s denial of benefits violated ERISA (count II). In count III, plaintiffs alleged that Teledyne breached its fiduciary duty to them under ERISA. Finally, plaintiffs alleged that Teledyne interfered with their exercise of rights protected by ERISA (count IV). Plaintiffs sought compensatory and punitive damages and attorney's fees.

The district court granted summary judgment for defendants and denied plaintiffs' motion for summary judgment, for the reasons explained below. Plaintiffs appeal to this court.

II

This court reviews a grant of summary judgment de novo. *Patton v. Bearden*, 8 F.3d 343, 346 (6th Cir. 1993). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to summary judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552-53 (1986). All reasonable inferences must be made in favor of the non-moving party in determining if a genuine issue of material fact exists. *Kunz v. United Food & Commercial Workers, Local 876*, 5 F.3d 1006, 1008-09 (6th Cir. 1993). Viewing the evidence in the light most favorable to the non-moving party, *Matsushita Elec. Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986), this court must determine whether "the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S. Ct. 2505, 2511-12 (1986). "The 'mere possibility' of a factual dispute is not enough." *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 582 (6th Cir. 1992) (quoting *Gregg v. Allen-Bradley Co.*, 801 F.2d 859, 863 (6th Cir. 1986)).

A

1. § 301 Claim Against Teledyne.

Count I of the complaint alleges that Teledyne failed to pay the special distribution, in violation of the collective bargaining agreement, and made material misrepresentations upon which plaintiffs detrimentally relied. Count I is premised on § 301 of the LMRA, 29 U.S.C. § 185. Section 301 confers jurisdiction on the district court over claims for breach of collective bargaining agreements. 29 U.S.C. § 185(a). The district court noted that, to find that Teledyne's failure to pay the special distributions contained in the 1988 collective bargaining agreement is a breach, it must first find that the provisions of that agreement

were still in force. The Plant Closing Agreement, however, released all relevant claims under the 1.988 collective bargaining agreement.[1] Thus, if valid, the Plant Closing Agreement precludes plaintiffs' § 301 claim against Teledyne; the district court determined that it lacked jurisdiction to determine the "validity" of the superseding agreement. Therefore, it dismissed count I.

In *Huessner v. National Gypsum Co.*, 887 F.2d 672, 676 (6th Cir. 1989), we determined that a district court lacked jurisdiction under § 301(a) over questions of the validity of collective bargaining contracts. Thus, the district court here properly determined that it lacked jurisdiction to entertain a challenge under § 301 to the validity of the Plant Closing Agreement. Because that Agreement superseded the 1988 collective bargaining agreement, including the Service Award Agreement, upon which plaintiffs' § 301 claim against Teledyne depends, there was no breach here that would support a § 301 claim.

Plaintiffs rely on *Central Transport, Inc. v. International Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of Am., AFL-CIO*, 805 F. Supp. 26, 28 (E.D. Mich. 1992), which held that *Huessner* precludes district court jurisdiction over determining the *validity* of a collective bargaining agreement, but not jurisdiction to determine whether an agreement *ever existed.* Plaintiffs argue that, under basic principles of contract law, a superseding contract never existed here, because there were no Union members to adopt the agreement (their membership in the union had terminated with the issuance of withdrawal cards), because there had been no required meeting at which the members could vote, because there was no consideration (they gave up "vested" special distribution benefits in return for

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[1] The Plant Closing Agreement did not release "obligations arising under this Agreement or health-related claims such as workers' compensation claims," which are not at issue in this case.

"nothing"),[2] and because Teledyne was guilty of "overreaching" (therefore the agreement is unconscionable); for these reasons, plaintiffs argue, the superseding contract is void.

Whatever the merits of the *Central Transport* decision, *Heussner* is the law in the Sixth Circuit and so governs the outcome of this case. Here, the Plant Closing Agreement was signed by the Union and Teledyne and on its face purports to be a valid, existing contract. Plaintiffs' claims go to its "validity," not its existence — just as plaintiff's claim in *Huessner,* that the agreement there had been procured through "fraud, duress, coercion, and intimidation" and failure to bargain in good faith, went to the agreement's "validity."

2. § 301 Claim Against the Union.

Count I also alleges that the Union violated its duty of fair representation under § 9(a) of the LMRA, 29 U.S.C. § 159(a), and that the violation is "actionable under Section 301 of the LMRA, 29 U.S.C. Section 185, and/or 28 U.S.C. Section 1337(a)." The district court concluded that this part of count I must also be dismissed because it asserted a hybrid § 301 claim and, for the reasons stated above, plaintiffs cannot satisfy the part of the hybrid § 301 test requiring a showing of a breach of a collective bargaining agreement.

In a hybrid suit under § 301, to recover against either the employer or the union, a plaintiff must show that the employer breached the collective bargaining agreement *and* that the union breached its duty of fair representation. *White v. Anchor Motor Freight, Inc.*, 899 F.2d 555, 559 (6th Cir. 1990). "Unless [plaintiff] demonstrates both violations, he cannot succeed against either party." *Id.* at 560. For the reasons stated above, there was no breach of a collective bargaining agreement here, and therefore plaintiffs' hybrid § 301 claim must fail.

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[2] This argument regarding lack of consideration is unpersuasive. Plaintiffs avoided litigation in exchange for certain, immediate, lump-sum cash payments.

However, plaintiffs also assert a § 9(a) breach of duty of fair representation claim in count I and purport to base jurisdiction on 28 U.S.C. § 1337. Section 1337 confers jurisdiction on the district court over any civil action arising under federal statutes regulating commerce. A union's duty of fair representation "arises out of the exclusive power granted unions by § 9(a) ... and when breached gives rise to a claim within the jurisdiction of the district courts under 28 U.S.C. § 1337." *Storey v. Local 327*, 759 F.2d 517, 518-19 (6th Cir. 1985). In *Storey*, we noted that the district court properly held that § 301(a) did not provide a basis for the plaintiffs' claim of breach of duty of fair representation. *Id.* at 518. However, "by asserting that the defendants violated section 9(a) of the Labor Act and relying on 28 U.S.C. § 1337 [in addition to relying on § 301], ... the plaintiffs properly framed their complaint for district court jurisdiction." *Id.* at 523.

In *White*, 899 F.2d at 561-62, however, we found that plaintiff's "complaint, although alleging jurisdiction under both section 301 of the LMRA and 28 U.S.C. § 1337, stated a quintessential hybrid 301 claim." Plaintiff's complaint in *White* stated: "This is a complaint of breach of a collective bargaining agreement arising from plaintiff's discharge from the employment of the defendant employer without just cause, and of the duty of fair representation by plaintiff's union in processing his grievance." *Id.* at 560 n.9. We found this to be "a succinct and unequivocal expression of a classic hybrid 301 cause of action." *Ibid.* Therefore, because plaintiff in *White* had failed to prove that the employer breached the collective bargaining agreement, he "should not be permitted to circumvent the logic of *Bagsby [v. Lewis Bros., Inc., of Tennessee*, 820 F.2d 799, 801 (6th Cir. 1987) (stating that plaintiff must show both violations in hybrid § 301 action),] and reach the jury with his claim that [the union] breached its duty of fair representation solely by virtue of artful pleading." *White*, 899 F.2d at 562. *White* also explained that

"[i]n hybrid 301 claims, ... the interrelationship between a union member, his union, and his employer is implicated." *Id.* at 561.

As this court subsequently noted, "*White* seemed to create a test which required that if a plaintiff's complaint stated a 'colorable claim' under the collective bargaining agreement, it must be construed as a Section 301 claim rather than a Section 9(a) claim." *Pratt v. United Auto., Aerospace & Agr. Implement Wkrs. of Am., Local 1435*, 939 F.2d 385, 389 (6th Cir. 1991). In *Pratt*, plaintiff had named as defendant only the union and had alleged only that the union failed to assist him in resolving difficulties regarding his absences from work; without more, the complaint did not state a hybrid 301 claim. *Ibid.*

A review of the complaint here indicates that plaintiffs' § 9(a) claim is actually a hybrid § 301 claim. The actions that the complaint alleges violate the Union's duty of fair representation all relate to ratifying the Plant Closing Agreement and thereby releasing all claims for benefits under the 1988 collective bargaining agreement. The complaint thus makes a "colorable claim" under the collective bargaining agreement: plaintiffs are alleging that the Union's actions divested them of their benefits under the 1988 agreement. Plaintiffs' claim is that Teledyne breached the collective bargaining agreement by not paying out the special distributions and that the Union breached its duty of fair representation in enabling Teledyne to do that under the authority of a superseding agreement. Just as in *White*, the complaint states a hybrid § 301 claim.

Because it is properly construed as a hybrid § 301 claim, plaintiffs' claim in count I against the Union should be dismissed because, for the reasons stated above, there has not been a breach of a collective bargaining agreement. The district court's dismissal of count I was proper.

Even if the claim in count I against the Union were construed as an independent cause of action cognizable under § 9(a) and 28 U.S.C. § 1337, summary judgment still would be appro-

priate because plaintiffs would be unable to satisfy the standards of *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 111 S. Ct. 1127 (1991). There, the Court indicated that a union breaches its duty of fair representation only if its actions are either arbitrary, discriminatory, or in bad faith; that the rule applies to all union activity; and that a union's actions are "arbitrary" only if, in light of the factual and legal landscape at the time of the union's actions, its behavior is so far outside a wide range of reasonableness as to be irrational. 499 U.S. at 67, 111 S. Ct. at 1130. *See also Ackley v. Local Union 337*, 948 F.2d 267 (6th Cir. 1991) (same). "*O'Neill* mandates that a deferential standard of review be utilized in evaluating a union's actions." *Nida v. Plant Protection Ass'n Nat'l*, 7 F.3d 522, 526 (6th Cir. 1993).

Plaintiffs argue that the Union violated its duty of fair representation by negotiating at all, because the special distribution payments had vested; by paying inordinate attention to ensuring that retirees' medical benefits were provided for, to the detriment of the active employees; and by acting arbitrarily in not fighting for the special distribution payments and in calling for repeated votes on a proposal that the employees had rejected.

The only factual issue in dispute appears to be whether the Union followed its rules in conducting the three votes. There is no dispute that the Union was concerned about the strong possibility of lengthy litigation over the pension benefits. Even viewed favorably to plaintiffs, but recognizing *O'Neill's* mandate that the Union's actions be evaluated with deference, the Union's actions in negotiating and getting ratified the Plant Closing Agreement were not irrational, in view of its belief that litigation would result and that its chances of prevailing were uncertain. Thus, while the Union's membership in the preceding year had rejected a proposed sale of the Hartville plant to another company (which would have preserved employees' jobs) because the members thought their severance pay was protected, the landscape had changed by the time effects bargaining was

underway: the plant was closing, and Teledyne contested the payment of the special distribution benefits. Further, it is "at least as plausible," *see Perry v. Million Air*, 943 F.2d 616, 620 (6th Cir. 1991), that the Union thought it had reached the best solution possible after months of negotiation and thus a finding of bad faith would not be warranted. Plaintiffs point to no evidence of hostility or animosity on the part of the Union. Thus, because the Union's actions were not irrational and not taken in bad faith, summary judgment for the Union was appropriate.

In sum, the district court properly dismissed Count I.

B

Count II alleges that Teledyne violated 29 U.S.C. § 1132(a)(1)(B) by denying plaintiffs "pertinent information with regard to their respective welfare benefit plans" and denying them "their full benefits due them under the welfare benefit plan" (i.e., the special distribution payment plan). Section 1132 (a)(1)(B) allows a plan participant or beneficiary to bring a civil suit "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." The district court dismissed this count because it was premised on the superseded 1988 collective bargaining agreement and the court therefore did not have jurisdiction over an ERISA claim premised on the invalidity of the superseding agreement. Plaintiffs argue that the special distribution benefits were vested and that Teledyne is estopped from denying that they were because plaintiffs relied on Teledyne's representations that they would receive those vested benefits.

Huessner resolves this issue, as well. There, we determined that § 301(a) of the LMRA did not confer on a district court jurisdiction over questions of the validity of a collective bargaining agreement. We also held that plaintiff's ERISA claims, brought under 29 U.S.C. § 1132 to collect from the

employer unpaid benefit plan contributions (thus, apparently a § 1132(a)(1)(B) action), did not provide an independent basis for district court jurisdiction based on a superseded collective bargaining agreement. *Huessner*, 887 F.2d at 677. We reasoned that the earlier, superseded collective bargaining agreement would have to be "in force" for the district court to have jurisdiction over those claims under § 1132; because it had "expired" when a subsequent superseding agreement was made, it was no longer "in force" and thus the district court lacked jurisdiction to enforce it.

Thus, the district court's decision here was proper. The collective bargaining agreement, including the Service Award Agreement, had been superseded by the Plant Closing Agreement, and the district court lacked jurisdiction under § 1132 to entertain a challenge to the Plant Closing Agreement's validity. Because, therefore, the collective bargaining agreement pursuant to which plaintiffs seek the special distribution benefits is no longer "in force," the district court lacked subject matter jurisdiction over the count II claim.

Plaintiffs assert that the special distribution benefits had "vested" contractually before termination of the collective bargaining and Service Award agreements, and that therefore the Union could not bargain them away and Teledyne cannot refuse to pay them.[3] This court has recognized that "Congress explicitly exempted welfare plans, as opposed to pension plans, from ERISA's vesting requirements." *Gordon v. Barnes Pumps, Inc.*, 999 F.2d 133, 136 (6th Cir. 1993) (citing 29 U.S.C. §§ 1051 and 1081). We are mindful of "Congress' considered decision that welfare benefit plans not be subject to a vesting requirement."

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[3] Plaintiffs contend that the Service Award Agreement is still in effect, because the terms of its termunation clause, which require Teledyne to send notice to the Union more than 60 but less than 75 days before June 15 if Teledyne desires to terminate the Agreement, have not been met. *Brief of Appellants* at 34. A letter from Teledyne providing such notice, however, appears in the record. *See J.A.* at 566.

Adams v. Avondale Industries, Inc., 905 P.2d 943, 949 (6th Cir.), *cert. denied*, 498 U.S. 984, 111 S. Ct. 517 (1990). We have also noted, however, that "under certain circumstances," employee welfare plan benefits may vest contractually. *Gordon*, 999 F.2d at 136 n.2; Adams, 905 F.2d at 949; *In re White Farm Equipment Co.*, 788 F.2d 1186, 1193 (6th Cir. 1986).

After examining the terms of the Special Award Agreement, we conclude that the special distribution benefits here did not vest by contract. The Agreement specifies that a special distribution is payable to an employee with at least five years' experience and "who is not eligible for a pension under any pension plan" of Teledyne. Undisputedly, each employee here was eligible for at least a deferred pension from Teledyne. Plaintiffs interpret this pension-eligibility provision to mean eligible for an *immediate* pension. We read the clause differently: It states, "eligible for a pension *under any pension plan*," which would include deferred pensions. Plaintiffs argue that inclusion of deferred pensions in the pension-eligibility clause would render the Agreement's "promise" of special distribution payments illusory, because after five years of service, which is one requirement to be eligible for a special distribution payment, every employee is eligible for a deferred pension, and so no payments would ever be made. However, as Teledyne points out, and plaintiffs do not dispute, when the Service Award Agreement was executed and for several years thereafter, it was possible (indeed, according to Teledyne, more likely) that an employee would qualify for a service award or special distribution payment without qualifying for vested pensions. The fact that Teledyne's pension plan could and did change as to its vesting provisions with no corresponding change in the Service Award Agreement does not render the latter's pension-eligibility provision inoperative. Plaintiffs fail to satisfy the pension-eligibility provision of the Service Award Agreement, and thus no special distribution benefits vested.

Plaintiffs also rely on *Armistead v. Vernitron Corp.*, 944 F.2d 1287 (6th Cir. 1991), and assert that Teledyne should be estopped from denying that the special distribution benefits had vested. *Armistead* explained that the doctrine of equitable estoppel applied in an insurance benefit plan case under § 1132(a) and required a showing of the following five elements: (1) conduct or language amounting to a representation of material fact; (2) awareness of the true facts by the party to be estopped; (3) an intention by the party to be estopped that the representation be acted upon, or conduct toward the party asserting the estoppel such that the latter has a right to believe that the former's conduct is so intended; (4) unawareness of the true facts by the party asserting estoppel; and (5) detrimental and justifiable reliance by the party asserting estoppel on the representation. 944 F.2d at 1298. Plaintiffs present very little argument as to why equitable estoppel would compel Teledyne to pay out any special distribution benefits. Even if *Armistead* applied here, plaintiffs would not survive summary judgment because they point to no evidence that would support their claim. Their argument amounts to the following: "For years, even through the period preceding the plant closing, Teledyne had the benefit of the promise." In other words, plaintiffs thought that they were entitled to the special distribution benefits and therefore Teledyne is estopped from denying it. Plaintiffs allege no explicit statements of the kind made in *Armistead* that would indicate that Teledyne represented to the Union or to the employees that they would be receiving the special distribution benefits; thus, they could not show that they relied on any representation. Plaintiffs fail the first and fifth elements of *Armistead*.

Arguably, the statement of the facts in plaintiffs' brief might provide some facts to defeat a summary Judgment motion. Plaintiffs note that, in 1988, Teledyne had provided $10,000 in "Severance Pay" to 100 employees affected by a plant closure due to the transfer of a product line; that it was during effects

bargaining that Teledyne for the first time asserted that no one was entitled to a special distribution payment; and that during effects bargaining, Teledyne calculated severance pay pursuant to the formula in the special distribution benefits agreement. However, there is no evidence to suggest that the $10,000 "Severance Pay" was paid pursuant to the special distribution benefits agreement or that Teledyne represented that it would be available for the 1991 Hartville plant closing. Even if Teledyne did not state that the employees would not receive the special distribution benefits until effects bargaining began, no evidence suggests that Teledyne ever represented that the employees were entitled to the special distribution benefits. Finally, the record does not indicate the reason Teledyne calculated the amount of the benefits; absent any representations by Teledyne, to conclude that Teledyne's calculation indicates that Teledyne thought the employees were entitled to the benefits would be speculation. Summary judgment for Teledyne on the claim of equitable estoppel under *Armistead* is warranted.

C

Count III of the complaint alleges that "Teledyne, as a fiduciary to the Plaintiffs' benefit plans, made material misrepresentations to Plaintiffs, upon which Plaintiffs relied to their detriment; failed to act in accordance with plan documents; acted in a manner adverse to the Plaintiffs' interests as beneficiaries; and terminated Plaintiffs' interests in its benefit plan. " Count III is premised on violations of 29 U.S.C. §§ 1104 and 1132(a). The district court dismissed this count because a breach of fiduciary duty claim under § 1132(a) can only be brought on behalf of the plan, not on behalf of the beneficiaries, as was plaintiffs' claim. Plaintiffs argue that their special distribution benefits were vested and that Teledyne had made representations to them that they were entitled to those benefits.

"[S]uits under ERISA for breach of fiduciary duty arise under 29 U.S.C.§ 1132(a)(2), which allows beneficiaries of a

plan ... to seek relief under 29 U.S.C. § 1109." *Bryant v. International Fruit Product Co.*, 886 F.2d 132, 135 (6th Cir. 1989); 29 U.S.C. § 1132(a)(2) (civil action may be brought "by a participant, beneficiary or fiduciary for appropriate relief under section 1109"). Section 1109 provides:

> Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate.

29 U.S.C. § 1109(a). Section 1104 sets forth the duties and obligations imposed on fiduciaries. 29 U.S.C. § 1104.

"Conversely, individual suits for recovery of denied benefits arise under 29 U.S.C. § 1132(a)(1)(B)." *Bryant*, 886 F.2d at 135. Here, plaintiffs seek recovery on their own behalf, not on behalf of the plan. Thus, the district court properly dismissed count III because a cause of action under § 1132(a)(2) permits recovery to inure only to the ERISA plan, not to individual beneficiaries. *Ibid.*; *Tregoning v. American Community Mut. Ins. Co.*, 12 F.3d 79, 83 (6th Cir. 1993) (§ 1109 provides relief only for a plan and not for individual participants).

D

Count IV of the complaint, premised on 29 U.S.C. § 1140, alleges that Teledyne Interfered with plaintiffs' exercise of rights protected under ERISA. Plaintiffs claim that Teledyne coerced them into ratifying the Plant Closing Agreement, thereby interfering with their rights under the 1988 agreement. The district court determined that § 1140 did not apply here

because plaintiffs undisputedly were going to be terminated whether or not the Plant Closing Agreement was ratified and, further, that Teledyne's conduct affected only the terms of the pension plan, not the employment relationship as contemplated by Congress.

29 U.S.C. § 1140 provides:

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan [or] this subchapter ... or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan [or] this subchapter ....

"The legislative history reveals that the prohibitions of [§ 1140] were aimed primarily at preventing unscrupulous employers from discharging or harassing their employees in order to keep them from obtaining vested pension rights." *West v. Butler*, 621 F.2d 240, 245 (6th Cir. 1980); *Varhola v. Doe*, 820 F.2d 809, 816 (6th Cir. 1987). "Congress designed [§ 1140] primarily to protect the employment relationship that gives rise to an individual's pension rights. *West*, 621 F.2d at 245. For conduct to fall within the parameters of § 1140, it "must affect the individual's employment relationship in some substantial way." *Id.* at 245-46. Section 1140 "does not purport to protect the financial security of pension funds." *Id.* at 246.

The district court properly granted summary judgment to Teledyne on this count. Teledyne's conduct does not fall within the scope of § 1140. No evidence suggests that Teledyne terminated or harassed the employees or otherwise altered the employment relationship to divest the employees of any benefits to which they were entitled. Rather, the employment decision was made, and then negotiations over (and finally ratification of) the

Plant Closing Agreement took place. Plaintiffs cite no evidence that would support a claim under § 1140.

III

For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

JANUARY 30, 1991 LETTER RE: PLANT CLOSING

Teledyne Monarch Rubber
State Route 43 North
Hartville, Ohio 44632-9686
Telephone: (216)877-1211
Fax: (216)877-1831

January 30, 1991

Mr. Daris Boggs, President
URW Local Union #99
210 Grand Trunk
P.O. Box 666
Hartville, Ohio 44632

Dear Mr. Boggs:

I regret to inform you that Teledyne Monarch will be closing all its facilities in the Hartville area and Tallmadge, Ohio. This will result in a permanent employment loss for the employees. The expected date of the first separation is April 2, 1991. The anticipated schedule for additional separations is April 15, 30, 1991, May 14, 28, 1991 and June 11,16, 1991. Attached hereto is a list of the job titles of positions in the bargaining unit to be affected and the names of the workers currently holding the affected jobs.

This notice is being provided to you in accordance with the Worker Adjustment and Retraining Notification (WARN) Act, Public Law 100-379 as established by the Federal Government.

If you have any questions about the closing, please contact Jim Nelson at 877-1211, extension 219.

Very truly yours,
Teledyne Monarch Rubber

/s/
Leo H. Everitt, Jr.
President

I.HEjr:sae
Attachment

1988 COLLECTIVE BARGAINING AGREEMENT, P.4

AGREEMENT

* This AGREEMENT is made and entered into this 1st day of January, 1988 by and between TELEDYNE MONARCH RUBBER located in HARTVILLE, OHIO, hereinafter referred to as the "Company", and LOCAL UNION NO. 99, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, hereinafter referred to as the "Union".

WITNESSETH: Whereas it is the desire of the parties to this Agreement to promote mutual cooperation and understanding and to formulate rules to govern the relationship between them, now therefore, the parties agree as follows:

ARTICLE I

Recognition and Union Security

Section 1- Recognition

(a) The Company recognizes the Union as the exclusive bargaining agency for all production and maintenance employees of the Company's plants in and around Hartville, Ohio, excluding office clerical employees, guards, professional employees and supervisors as defined by the National Labor Relations Act.

(b) The Company agrees to meet with and bargain with the accredited representatives of the Union on all matters pertaining to rates of pay, wages, hours of employment and all other working conditions.

Section 2 - Union Security

(a) It shall be a condition of employment that all employees of the employer covered by this Agreement who are members of the Union in good standing on the effective date of this Agreement shall remain members in good standing and those who are not members on the effective date of this Agreement,

shall on the thirtieth become and remain members in good standing in the Union. It shall

APRIL 5, 1991 LETTER TERMINATING COLLECTIVE BARGAINING AGREEMENT EFFECTIVE 6/16/91

Teledyne Monarch Rubber
State Route 43 North
Hartville, Ohio 44622-9666
Telephone: 216-877-1211
Fax: (216) 877-1831

CERTIFIED MAIL

April 5, 1991

Mr. Daris Boggs, President
U.R.W. LOCAL UNION #99
210 Grand Trunk
P.O. Box 666
Hartville, OH 44632

Dear Mr. Boggs:

This is written notice pursuant to Article XIII of our Production and Maintenance Labor-Management Agreement and Article XIV of our Technical Labor-Management Agreement that Teledyne Monarch Rubber desires to terminate all agreements, including the Collective Bargaining Agreements, effective 12:01 a.m. the 16th of June, 1991.

Sincerely,

Teledyne Monarch Rubber

/s/
James M. Nelson
Vice President
Human Resources

JMN/jh.81

KENNEDY DEPOSITION
(pp. 6, 7, 31, 35, 56)

[Pages 6-7]

Q. What have those positions been?

A. 1967 I was elected as executive board member and I've been basically an officer since 1977. I had two terms, three terms as a vice president, but my main function was what they call pension insurance, that's — and chairman of the Worker's Comp. committee.

Q. And for how long have you been involved or were you involved with pension and insurance on behalf of the union.

A. Probably since 1967?

Q. Continuously up until when the plant shut down?

A. Yes.

Q. Do you know the gentlemen that's sitting behind you, Mr. Nelson?

A. Yes, I do.

Q. Did you have any contact with Mr. Nelson during any negotiations or otherwise while you were employed at Teledyne Monarch?

A. Yes, I did. We negotiated with Mr. Nelson in 1985 and 1988 and 1991.

Q. Do you recall at any time ever Mr. Nelson telling you that this blue book was not in effect while the company was, while he was negotiating on behalf of the company?

A. No.

Q. Was it your understanding in — from 1985 through 1991 up until the time the plant shut down that the contract between the company and union included both the gray book and the blue book?

A. Yes.

Q. Without respect to whether Mr. Nelson said it to you are you aware of any time he ever told anyone in the union that the blue book was not part and parcel of the union contract from 1985 through 1991?

A. No, it's always been in effect and a parcel, it's been our agreement.

Q. And has that been something that's been stated to you by company officials?

A. Yes.

Q. Who for example?

A. I think Mr. Nelson.

Q. All right.

A. And —

Q. I'm sorry.

A. I think John Grimm also.

Q. How about for example when the effective

[Page 31]

Q. Well, didn't employees talk about the fact that if the company shut down they had the right to a special separation supplement?

A. No.

Q. You never heard anybody say that in 1990?

A. No.

Q. Did you ever hear anybody say that at all?

A. I heard them say that in 1991 but not in '90 or '89.

Q. When you heard them say it in 1991 did you say hey, you're crazy, you're not entitled to the benefit?

A. No.

Q. Did you do anything to dispute them that they had the benefit?

A. No, not until early, not until I had the discussions with Mr. Long and our attorneys. The question never came up and when it did it was established that that was not a benefit.

Q. In 1988 when the collective bargaining agreement was agreed to and ratified was the blue book part and parcel of the collective bargaining agreement in your opinion?

A. Yes.

Q. In part that the blue book includes the

[Page 35]

Mr. HILKERT: Let me take a break for a minute here, sir.

(Short recess was had).

(Mr. Whetshell entered the room).

BY MR. HILKERT:

Q. Mr. Kennedy, at the time that the Edgewater deal was turned down by the membership, whenever that might have been, isn't it true that when asked about the special distribution that you told the employees that they would get it and even went through with them the fact that you would go back to 1985 wages and multiply by two percent or three percent or whatever the applicable percentage is?

A. If anyone was eligible for it that's what we would do and I did go back and use the 1985 or '86, I don't recall. I think it was, let's see, three years. It would have been 1985, right, that's the configuration I used.

Q. So when the employees asked about the special distribution you did in fact go back and make a calculation for them?

A. Yes, I did.

Q. And earnings and —.

A. Right.

[Page 56]

correct those errors in Community's booklet?

A. Not in 1985, no.

Q. Did you do that later?

A. Didn't do that until just recently, in 1992, 1991, I think November.

Q. Okay. Concerning the — so what you're saying is that the insurance benefits for the bargaining unit people are no longer in the blue book but are now in the separate booklet?

A. No, we still go by that.

Q. You still go by this?

A. Yeah, because if you look in that booklet, you know, there's a plant closure provision that tells you when a plant closes what basic benefits you're going to have and that's the agreement we used on the plant closure.

Mr. HILKERT: Just so the record is clear when the witness said the booklet he pointed to the blue book.

MR. POST: That's correct.

BY MR. POST:

Q. Did you have discussions since 1985 with Mr. Nelson concerning printing another blue book?

A. Many, many.

Q. And to your knowledge did he ever agree to

PENSION, INSURANCE AND SERVICE AWARD AGREEMENT (pp. 3, 89-92)

[Page 3]

This agreement is entered into the 1st day of September, 1982 by and between Teledyne Monarch Rubber located in Hartville, Ohio, for its plants (namely, Plant 1, 2, 3 & 5), hereinafter referred to as the "Company", and LOCAL UNION NO. 99 of the United Rubber, Cork, Linoleum and Plastic Workers of America, hereinafter referred to as the "Union".

Wherever used in this agreement,

(a) The term "Collective Bargaining Agreement"means the present agreement dated September 1, 1979 as amended November 23, 1981, entered into between the parties hereto or any new agreement, replacing such present agreement, hereafter entered into between the parties thereto.

(b) The term "Company" or "Employer", as used herein, shall mean Teledyne Monarch Rubber.

(c) The term "Employee"as used herein shall mean any employee who is an hourly rated employee in the service of the Employer, and any employee who is a salaried employee in the service of the Employer and is represented by a collective bargaining representative with whom his Employer has in effect a contract providing for pensions under the Plan.

(d) The term "Union"means Local Union No 99 of the United Rubber, Cork, Linoleum and Plastic Workers of America.

[Pages 89-92]

Service Awards and Special Distributions and Discontinuance of Operations

1. Eligibility

A Service Award shall be payable to each Employee who has 5 or more years of continuous service and who is not eligible for a pension under any pension plan of the Employer and

(a) who retires after having attained the age of 65 years, or

(b) who is retired by his Employer because he is no longer able to qualify for transfer to another job.

2. Amount of Service Award

The amount of the Service Award will be computed on the basis of a percentage of the Employee's total earning during his period of continuous service determined as follows:

(a) For an Employee with at least 5 and less than 10 years of continuous service - 2%;

(b) For an Employee with at least 10 or less than 15 years of continuous service - 2 - 1/2%;

(c) For an Employee with 15 or more years of continuous service - 3%.

(d) For an Employee with at least 5 years of continuous service who retires or is retired on or after attaining age 65 - 3%.

In no event will the amount of the Service Award, as computed above, be less than an amount equal to $350 multiplied by the number of years of continuous service.

3. Miscellaneous Provisions Relative to Service Awards

The following provisions shall also be applicable to Service Awards:

(a) If any dispute shall arise regarding an Employee's qualifications for transfer to another job or his ability to meet the requirements of his job it shall be subject to the same procedure set forth in Article IV, Section 6.3 (f) of the Pension Plan Document.

(b) "Earnings", as used in Paragraph 2 above, shall mean the entire amount of compensation paid to an Employee by the Company or any subsidiary of the Company, including piecework earning and bonuses, overtime pay, shift premiums, vacation pay, reporting-for-work pay and holiday pay. In order to determine the Employee's "total earning during the period of continuous service", as used in paragraph 2 above, his earnings in the calendar year 1985 shall be multiplied by the number of full years and twelfths of any portion of a year comprising his period of continuous service. If an Employee had no earning during a portion or all of 1985 his earnings shall be adjusted under such regulations not inconsistent with the Plan, uniformly applied, as the Pension Committee shall adopt, including a regulation that if an Employee had no earnings or had earnings in less than nine weeks, his actual earnings, if any, for 1985 shall be disregarded, and his earnings for such year shall considered as being the average of his earnings for the first preceding year, if any, in which the Employee had earnings in at least nine weeks, and the next succeeding year, if any, during such period in which the Employee had earnings in at least nine weeks.

(c) An Employee, by acceptance of a Service Award, thereby terminates his service with his Employer.

(d) It is not the intention to grant Service Awards to temporarily disabled Employees under the age of 65 who desire to leave service of the Employer of their own volition and are still considered employable by the Employer.

4. Special Distributions on Discontinuance of Operations

In the event that all operations of the Employer at the location covered by the Agreement of which this Exhibit is a part shall be completely and permanently discontinued, a Special Distribution shall be payable to each Employee:

(a) whose employment is terminated as a result of such discontinuance of operations:

(b) who at the time of such termination of employment had completed 5 or more years of continuous service:

(c) who is not eligible for a pension under any pension plan of the employer; and

(d) who is not eligible for a Service Award under the provisions of Paragraph 1 above.

5. Amount of Special Distribution

The amount of the Special Distribution will be equal to the amount of the Service Award, as computed under Paragraph 2 above, which the Employee would have been entitled to receive, at the time his employment was terminated by reason of the discontinuance of operations, if he had then been retired by his Employer because he was no longer able to meet the requirements of his job and was unable to qualify for transfer to another job.

6. Definitions

The terms "Company", "Employer", "Employee"and "Collective Bargaining Agreement"as used herein shall have the same meaning as when used in the Agreement to which this Exhibit is attached. The term "1955 Pension Plan"shall mean the 1955 Pension Plan of the Company as from time to time in effect.

BOGGS DEPOSITION
(pp. 24- 27, 66-67)

[Pages 24-27]

A. Did I ever get a written? I don't recall if I did or not to tell you the truth about it. I don't recall.

Q. So your opinion never changed. Even when you signed that collective bargaining agreement you still felt that under the blue book in the terms of contract the Local 99 members were entitled to that special distribution?

A. Yeah, when the rep had the vote, you know, you pretty well have to go the way the membership tells you —

Q. I didn't know that.

A. — or set in taking it back and that, you know.

Q. Let's talk about the vote.

A. See, I didn't sign the agreement until it was passed in the executive board, taken to the membership and the vote was voted on.

Q. When did the employees first vote on the plant closing agreement?

A. Which one?

Q. When was the first vote on a plant closing agreement?

A. June 14th.

Q. Of 1991?

A. Yeah.

Q. And what was that vote.

A. I don't recall numbers, exact numbers.

Q. Did the plant closing agreement pass?

A. No.

Q. What was the decision of the executive board — strike that.

When that plant closing agreement failed what was the next step as far as the Local 99 with regards to a plant closing agreement

A. What was the next step?

Q. Yeah.

A. Well, we mainly tried to get something better out of the situation.

Q. Did you hold further meetings with the company?

A. I think we held one or two, I'm not positive, I'm not positive how many. I think we did.

Q. And did you in fact negotiate a different plant closing agreement?

A. The company made an offer to — which time are we talking about here? Are you talking about the June 14th?

Q. Yes.

A. No, not the June 14th agreement we didn't.

Q. Subsequent to the June 14th agreement was there another vote?

A. Yes, there was. There was some interest on — Dorothy Bixler was the secretary and she said there was some interest in the agreement, the people wanted it to pass so —

Q. What agreement?

A. The bargaining agreement.

Q. The one — the plant closing agreement?

A. Yeah.

Q. The one that failed?

A. Uh-huh. She said there was interest and the people wanted, felt that she thought there was enough interest to have another vote. So then at that time they started calling people and getting signatures. And I told them that I wouldn't have another vote on any agreement unless I had over 200 some, 250 signatures or something like that. And her and Bill VanCamp started calling the membership and at that time they come in and signed their names and that's what created the second vote.

Q. Whose discussion was it to have Dorothy —

A. Well —

Q. Let me ask my question first.

MR. HILKERT: Let her finish.

BY MS. SMITH:

Q. Whose decision was it of Dorothy and Bill VanCamp to make these telephone calls?

A. We said that if we had enough interest, we'd call the people.

Q. Who said that?

A. Well, I think we had set — now, let me make sure how this went. We decided to call the membership.

Q. When you say "we"?

A. Dorothy Bixler and Kenny May and Bill VanCamp and a few other ones, to see if there was interest in the agreement, you know, the barg — closing agreement. So at that time they started calling the people and the people started coming in and signing their names, you know, over 200 some signatures. And at that time I talked to the executive board and they'd see if we'd take it back to the membership board again and we had another meeting and that's what happened.

Q. Did you obtain an opinion of legal counsel about calling members after you had had plant closing agreement fail?

A. At that time I don't recall whether I did or not really.

[Page 66-67]

Q. — had the company representatives communicated to the union this change they were offering in the plant closing agreement?

A. Yes, in the committee, yeah.

Q. So you and the committee were present along with the company representatives?

A. Uh-huh. I think it was on a Monday, I'm not positive.

Q. It was some time prior to this August 6th letter; is that correct?

A. I think so, yes.

Q. And was there a representative of the international union present at that meeting?

A. Yes.

Q. And who was that?

A. Carol Wonders was there.

MR. POST: Okay. I have no further questions.

- - -

DIRECT EXAMINATION

BY MR. ARMSTRONG:

Q. Just a few here. Daris, when did you first become aware that there would be a plant closure?

A. I think it was some time in January I believe.

Q. All right. And after that time during the membership meetings did you have occasion to discuss what would happen as a result of that with the membership.

A. Yeah, I had informational meetings. I told them that everybody would have a right to vote when it was in the 60 day

notice, that fell in the 60 day notice effective bargaining and some maybe in the 60 day notice wouldn't be eligible to vote including retirees or people laid off. And notes were taken at that meeting and Dorothy Bixler was the one that wrote the notes.

Q. And approximately how early do you recall telling the membership that everyone at work on the effective date of the closure notice would be able to vote?

A. At least by April the 30th.

MR. ARMSTRONG: I'd like to have this document marked.

(Defendant's Exhibit A was marked for identification.)

BY MR. ARMSTRONG:

Q. Showing you what's been marked as Defendant's Exhibit A, can you identify that

SMITH DEPOSITION
(pp. 16, 19, 21-22, 32-33, 49, 67)

[Page 16]

Management President of Teledyne.

Q. When you say Teledyne, you mean Teledyne Inc.?

A. Yes.

Q. And who would that be?

A. Mr. Bill Rutledge.

Q. Would you spell Mr. Rutledge's name?

A. R-U-T-L-E-D-G-E. Is that right?

Q. And do you recall what the financial data that you gave to Mr. Riley indicated with regards to the viability of sale of the company?

A. I don't know that specifics, but the data we reviewed indicated that it was in the best interest to proceed and attempt to sell the division.

Q. When you say in the best interest, you mean in the best financial interest of the company?

A. In the best interest of all parties.

Q. When you say all the parties —?

A. You mean — I mean Teledyne, the division, and the employees.

Q. So, of the three options, sale, continued operation and closure, to the best of your recollection, the best option was to sell the plant?

A. Depending on, number one, if there was a buyer, the economics of any program you can put together — and, in fact, another option other than the three

[Page 19]

A. The Van Haltern discussions materialized into a sale of one of the product groups of the division of Monarch Rubber.

Q. And what product group was that?

A. That was the military tank wheel product line.

Q. And where's that located?

A. It's currently located in Hartville, Ohio.

Q. Can you give me the address?

A. No, I can't.

Q. And when did that sale take place?

A. It took place in the time frame of April of 1991.

Q. What happened with the discussions of sale to the Edgewater Group?

A. The Edgewater Group proceeded to significantly enter the process of negotiating a sale. And the Edgewater Group had a condition within the sale terms that before completion of the sale they would have to negotiate a labor agreement with the URW Local 99 that was at the Hartville facility. The Edgewater Group spent extensive time negotiating with the Local to obtain a contract and that ended in a vote by the Local which turned down the opportunity to reach an agreement with the Edgewater Group on the labor contract.

Q. Were you involved with that, the negotiation

[Pages 21-22]

Q. I guess I still don't have an answer to my question and that's how you came about the information that you gave me about the URW being unable to negotiate a contract with the Edgewater Group?

A. I was coordinating the sale effort with Edgewater Group. And as a result of that coordination I was, number one,

aware of the terms of that agreement we had with Edgewater and I was then knowledgeable of what they were doing to obtain a labor agreement with the Union to allow them to further the sales effort of that division.

Q. How are you knowledgeable? In other words, who from Edgewater kept you informed?

A. I was working with the Edgewater Group people and that is Mr. Ted Sawyer and actively on the site also Mr. Pat Clark.

Q. And if Edgewater Group had been able to negotiate a contract with the URW, then the sale would have gone through to that group?

A. If Edgewater would have been able to negotiate a contract with the union, it would have relieved that condition of the letter of intent agreement and we would have proceeded towards the sale, but I certainly can't — cannot say it would have been executed.

Q. Again, the non-ratification of the URW agreement with Edgewater put a stop to any further efforts to sell the plant to Edgewater Group?

A. Absolutely.

Q. What did Mr. Clark and Mr. Sawyer tell you with regards to their efforts to negotiate a labor contract with the employees?

A. I do not remember any specific communication between either party regarding that.

Q. Do you recall if they discussed that topic with you?

A. Yes.

Q. Do you recall anything other of their discussions on that topic?

A. I recall the — some generalities regarding their conversations that, number one, they were putting forth significant effort towards obtaining this labor agreement and that they were very, very disappointed that they were not successful and that the Union voted down the labor agreement that they presented. I recall that.

Q. Do you recall anything else about what they told you about why it was voted down or who was involved or if anyone was responsible or anything else with regards to the contract?

A. I don't recall any other specifics, no.

[Pages 32-33]

A. Okay. The lump sum was a — we'll call an issue, but it was evolved during the negotiation process with the Union on the effects part of the negotiation process as an alternative that Teledyne presented to the Union to see if they would be interested in pursuing that as an alternative of — alternative aspect of settling or agreeing upon a closing agreement.

Q. Why did the company come up with that offer?

A. The company felt that one of the objectives of the Union was to be able to get into the hands of the Union members some, I'll call it up-front cash. In other words, get into their control some proceeds or cash. And that was one option that was discussed that would allow us to offer to the Union a way that they could receive some up-front cash at that point. And as a result we thought we would at least offer it and see if they had an interest in pursuing it.

Q. For the employee to actually receive that money as up-front cash they would have to take substantial penalties — receive a cash penalty, would they not?

A. That's not an area that I have expertise in.

Q. Well, it's not an area that I have expertise in either. But if someone takes pension money and doesn't roll it over into

another pension fund, they take substantial tax penalties, do they not?

A. I recall that our pension people did make that point that that was — that situation is true.

Q. You stated that you were never in on the actual negotiations; is that correct?

A. Correct.

Q. Why was that?

A. My role was not to be directly involved in the negotiations. I was just not — that was not my directive from Teledyne management.

Q. Was there a reason for that that you're aware of?

A. I have no idea.

Q. How did you keep knowledgeable about what was going on in the negotiations?

A. Before the negotiations and after the negotiations, I would discuss with John Grimm and Jim Nelson and I would read the meeting notes.

Q. Did you advise Mr. Grimm and Mr. Nelson of any action to take during these negotiations?

A. I was part of the management team that discussed the situation and made recommendations, as I stated earlier, to Teledyne management. And then we received our instructions and they proceeded with them in the sessions. So, the answer to your question more

[Page 49]

Q. the time?

A. I can't recall if I saw it?

Q. You don't know whether or not you saw it?

A. I don't know.

Q. But certainly you didn't see it enough that it stuck in your mind that you saw it?

A. Correct.

Q. At the beginning of this deposition you had stated when you were discussing the sale of the plant that a sale would have been in the best interest of all of the parties. Was that because the employees at Teledyne would have kept their job if the plant had in fact been sold?

A. That is — that is one of the important aspects of that, yes.

Q. Was there anything else important to the employees if the plant were sold?

A. I'm not aware of anything else specifically that would have been important to them other than the continuance of their employment.

Q. You've been in the consumer and industrial segment since 1989; is that correct?

A. Since December of 1989, yes.

Q. I'm going to assume, and correct me if I'm wrong, that you were not involved in negotiations in

[Page 67]

Q. marked Exhibit Seven, I would ask if you can identify that document?

A. This was an internal Teledyne paper that I prepared to use as what I would call a white paper to discuss and prepare for an up-coming effects bargaining session.

Q. Did you review this document in preparation for your deposition today?

A. I looked at it, but did not review it in depth.

Q. Next to the first star there's an enhanced pension benefit and there are three items under that topic stating all active

employees will be vested in the pension plan, this benefit would effect all retirees plus all active employees, pension benefits will be increased by approximately 12 percent. Of those three enhanced pension benefits, how many of them were actually included in the plant closing agreements?

A. None of those were.

Q. Okay. If you look beneath that, alternative to enhanced pension benefits, one-time pension benefit, and under that it says this benefit would affect all active employees at plant closing, one-time cash benefit of $2,500 per employee. Which of those were included in the plant closing agreement?

A. Neither of those.

OCTOBER 19, 1990 PROPOSAL BETWEEN EDGEWATER AND LOCAL 99

Local Union No. 99
United Rubber, Cork, Linoleum &
Plastic Workers of America,
AFL-CIO, CLC
210 Grand Trunk, P.O. Box 666
Hartville, OH 44632
216/877-2985

AGREEMENT

Enter into and effective this 19th day of October, 1990.

Monarch Tire and Rubber Company agrees to the following:

1. Monarch Tire and Rubber Company agrees to the Pension and Insurance Book (blue book date September, 1982 and September, 1985) to be modified only by their Appendix B.
2. Monarch Tire and Rubber Company agrees to pay employees two (2%) of their 1990 year earnings for each week of the 1991 vacation.
3. Monarch Tire and Rubber Company agrees to pay the premium coverage for retirees insurance and hospitalization; however, retirees will be required to pay twelve ($12.00) per month toward their insurance.
4. Monarch Tire and Rubber Company agrees there will be no hiatus of seniority between Teledyne Monarch Rubber employees and Monarch Tire and Rubber Company.
5. Monarch Tire and Rubber Company agrees to carry over all Union hours to the new contract.

URW Local #99

/s/
Daris G. Boggs
President

Monarch Tire and Rubber Co.

/s/
Patrick E. Clarke
President and C.E.O.

MAY DEPOSITION
(pp. 19-20, 22, 32)

[Pages 19-20]

lot of things were discussed and one of them was whether or not we would or wouldn't be entitled to severance if it was sold.

Q. You recall that specifically being discussed?

A. Not specifically. I know that was one of the points but I don't recall any one person specifically saying this or that.

Q. But you recall that that topic was discussed?

A. Yes.

Q. Did you ever tell any of the Local 99 members that they they would be dues exempt for one year on the plant closing?

A. No.

Q. Did you ever hear Daris Boggs tell union members that if they approved the sale of the plant to the Edgewater group that they would not get their severance pay?

A. Well, that was the issue they just talked about. If it was sold rather than closed, you wouldn't be entitled to severance.

Q. And Mr. Boggs made that statement?

A. I believe so.

Q. Did Daris Boggs present all contract offers from Edgewater to the union members?

A. All contracts? As far as I know there was only one. He did.

Q. You have no knowledge of another contract offer from Edgewater?

A. Not a specific offer.

Q. Do you have any knowledge of any changes in their original offer that were not brought to the membership?

A. Yes.

Q. And what were those changes?

A. They were going to change the pension and the insurance.

Q. What precisely were those changes, if you recall?

A. The insurance was going to be — well, originally was an 80/20 co-pay and I think it had a maximum amount and they lowered that amount?

Q. The deductible amount?

A. Yes.

Q. You don't recall what it was lowered from and to?

A. I don't remember. It was —

Q. That's the change in the insurance. Do you recall the change in the pension?

[Page 22]

A. Just that Daris brought it before us and I can't recall any one thing that everybody said but just that the feeling was that Edgewater — the original proposal got voted down so badly if they came back with those two changes that it wouldn't change the outcome of the vote.

Q. Do you recall the original vote for and against that Edgewater contract?

A. The numbers?

Q. Yes, approximately.

A. No.

Q. Was it a three to one ratio?

A. Worse than that.

Q. Five to one or ten to one?

A. It was like nine to one.

Q. At one of those meetings to discuss the sale to Edgewater group do you recall Jim Kennedy reading from Exhibit A of this blue book in response to a question regarding severance pay?

A. Yeah, I think someone brought it up and he read the pages or parts of those pages that you referred to earlier.

Q. Did you ever see a document that the union created or compiled that listed what each employee would get under the blue book formula for severance

[Page 32]

believe the last week of May. That doesn't jive with the June meeting, does it?

Q. No.

A. It must have been the May meeting we discussed it. I'm almost positive we disbursed it the last week of May.

Q. So that according to what you have told me there would have been approximately 350,000 in assets left?

A. Yeah.

Q. And do you know what happened to the $350,000 in assets?

A. No.

Q. Do you know what happened to any part or section of that amount?

A. No.

Q. Were you ever issued an honorary withdrawal card?

A. No.

Q. Honorary withdrawal cards were issued to union members in July of 1991; is that correct?

A. Yes.

Q. And can you tell me how that came about?

A. Daris instructed me to issue honorary withdrawal cards to all members except for the

AFFIDAVIT OF JOHN R. ADCOX

Affiant, being duly sworn, deposes and states as follows:

1. I am a adult, competent to make this Affidavit and I make these statements from personal knowledge.

2. I am a long term employee of Teledyne Monarch Rubber.

3. Concurrent with my employment by Teledyne Monarch Rubber, I was a member of the United Rubber, Cork, Linoleum and Plastic Workers of America (URW) and Local No. 99.

4. In June 1991, Teledyne Inc., closed the Teledyne Monarch Rubber plant in Hartville, Ohio.

5. As a result of the plant closing, I lost my job at Teledyne Monarch Rubber.

6. Prior to the announced closing of the plant in January 1991, a group of investors, known as "The Edgewater Group", attempted to purchase the Hartville Plant.

7. One of the requirements of the sale was that the members of URW and Local No. 99, myself included, had to approve a collective bargaining agreement with Edgewater.

8. The Local No. 99 held meetings, which I attended, in the fall of 1990 to discuss the proposed purchase by The Edgewater Group.

9. At these meetings, Daris Boggs, President of Local No. 99, advised its members, including myself, voting on Edgewater's proposed contract that, if Teledyne, Inc. sold rather than closed the Teledyne Monarch Rubber plant, its members would not receive their severance pay as provided in the Pension, Insurance and Service Award Agreement ("blue book").

10. In responding to members' questions as to their entitlement to severance, James Kennedy, Vice-President of Local

No. 99, and its pension and insurance expert for twenty-five years, stood and ready pages 89-92 of the blue book.

11. Subsequent to the union's meeting, the membership turned down Edgewater's proposed contract.

12. Subsequent to the member's rejection of Edgewater's proposal, Edgewater presented an improved proposal. Boggs did not present this revised offer from Edgewater to the members of Local No. 99.

13. For years, and throughout the plant closing negotiations in June 1991, and URW and Local No. 99 represented to me and other of its members that we were entitled to the severance pay contained in the blue book.

14. Throughout this time period, Local No. 99 and the URW represented to its members, including myself, that, if Teledyne would not agree to provide its members with the Special Distribution severance pay, the Union would file a lawsuit on their behalf.

15 At the vote held on June 14, 1991, the proposed Plant Closing Agreement was rejected a vote of 143 for and 209 against.

16. On or about June 28, 1991, the URW and Local No. 99 held a meeting, at which I was present, to decide whether the Plant Closing Agreement should be voted on a second time.

17. At that meeting, the majority of the union membership rejected reconsideration of the Plan Closing Agreement.

18. Prior to the August 22, 1991 vote, URW and Local 99 informed its members that, if they did not approve the Plant Closing Agreement on August 22, 1991; retirees of Teledyne Monarch Rubber would lose their health coverage; employees would not be able to obtain their vested pension money; and employees would not get their pension money at all if they insisted on receiving the special distribution.

19. Pursuant to the August 22, 1991 Plan Closing Agreement, an employee who opts for a lump sun pension benefit loses entitlement to retiree health insurance.

20. Prior to the vote on August 22, 1991, several URW and Local No. 99 members and I requested additional information and the opportunity to debate and organize opposition against the Plant Closing Agreement.

21. The URW and Local No. 99 denied us this right.

22. The URW and Local No. 99 have refused to pursue any grievances filed by me.

FURTHER AFFIANT SAYETH NAUGHT.

/s/
John R. Adcox

County of Summit
State of Ohio

Sworn to and subscribed before me this 31st day of August 1992.

/s/
Katherine C. Smith
Notary Public

AFFIDAVIT OF LARRY B. WHETSELL

Affiant, being duly sworn, disposes and states as follows:

1. I am an adult, competent to make this Affidavit and I make these statements from personal knowledge.

2. I am a long term employee of Teledyne Monarch Rubber.

3. Concurrent with my employment by Teledyne Monarch Rubber, I was a member of the United Rubber, Cork, Linoleum and Plastic Workers of America (URW) and Local No. 99.

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19. Pursuant to the August 22, 1991 Plant Closing Agreement, an employee who opts for a lump sum pension benefit loses settlement to retiree health insurance.

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21. The URW and Local No. 99 denied us this right.

FURTHER AFFIANT SAYETH NAUGHT.

/s/
Larry B. Whetsell

County of Summit
State of Ohio

Sworn to and subscribed before me this 31st day of August, 1992.

/s/
Katherine C. Smith
Notary Public

OCTOBER 25, 1990 MEETING
LOCAL 99 REPRESENTATIVES WITH INTERNATIONAL ATTORNEY

International Office
Meeting with Chuck Armstrong
October 25, 1990

Present: Chuck Armstrong, Daris, Jim and Dorothy

Effective Bargaining:

1. When do we start Effective Bargaining with the company?

A. Burden is on us. Send an official letter as soon as possible.

A. If the decision is motivated because of labor cost they are forced to bargain with you.

2. Can we have International attorney in the meeting?

A. Yes, Call Kenneth Coss and ask for them.

Severance Pay:

1. Who is eligible?

A. Employees who are not eligible for a pension. (Employees with 30 years service or 55 years old or older with less than 30 years of service).

A. If you are terminated because of the plant closing.

A. If you quit for other employment you are not eligible for severance pay. You have to stay there until the baby goes down.

A. Employees already on lay off. It will have to go arbitration.

2. If they keep one person for a year and try to get out of paying severance, can they do it.

A. The company wouldn't win it in court. It would be a sham.

A. You file a claim when the first one is terminated.

Schooling:

A. You would have to petition for it because of import products.

A. You have to ask the company why they are closing.

References:

1. Can we help them if their insurance is stopped.

A. Yes, file a law suit on their behalf; Class Action Suit.

A. We could Local #99 money to fight it in court.

Local #99 - Treasurer

1. Use it to fight for Severance Pay.
2. Help retirees fight for insurance if stopped.
3. Help if any employee has their benefits stopped.

A. If union funds are depleted International will not help.

NOTES FROM INFORMATIONAL MEETINGS NOVEMBER 1990

1. Told Jim Nelson to change heading, it's not a URW Contract.

2. Explained meeting with John Weber. Paper handed out.

3. Had contract explained.
   1. Dorthy-Other
   2. Ivan and Benny - Art VI.
   3. Jim - Insurance

4. Said we are going on the assumption that the plant is closing. The state has to be notified when they post a 60 day notice. Everything will kick in a that time.

   Jim explained about calling officials and the meetings we've had.

5. Said we filed a petition for Trade Adjustment Assistance.

6. Severance Pay - Talked to Int'l. They will help get it for the ones that are eligible.

   I sent a letter to the company on Effective Bargaining. I received a answer. When we do the Effective Bargaining will have answers on Severance Pay, etc.

7. If you quit you do not get Severance Pay. Anyone laid off after the posting (60 day notes) will be eligible for Severance Pay.

Next Meeting

1. Explain about change of heading - URW contract notified Nelson.

2. Explain letter of meeting with John Weber.

3. Said Dorothy, Ivan, (Art. IV), Benny and Jim (Ins.) to exp. contract.

4. Exp. that contract was not good.

5. Exp. go on assumption of plant closing. Have to post 60 day notice. Said they will have to notified state.

6. Jim exp. call rep. and meetings.

7. Exp. Petition being filed for Trade Adjustments.

8. Severance Pay - Talk to Intl' - will help get it to the one's that are eligible. Filed Effective Bargaining with company. Depends on what the courts say, not the company, International say we will.

9. If your eligible - 55 or older or 30 service you would not be eligible.

10. If you quit you do not receive Severance Pay. Lay off after letter posted you get Severance Pay.

Marg. Ask about Severance Award - will you get both?

Doris It's a question mark on that.

Marg. Who know language. Have 18 years, do I still get pension if I take Severance Award?

Doris Nothing for sure.

Marg. I'll miss 8 days over a period of time. You can get fired.

Discussed Occurrences

Doris S. Why are we discussing something were not going to vote on.

Ask about W. Comp. Supp. gone?

Larry J. Something they just handed us. They want an answer?

Doris Said he wouldn't negotiate. They would talk with him and Jim but I won't do that.

Larry It's not neg.

Doris Giving you information.

Doris May have more meetings.

D. McIntree Why is ins. so high?

Doris Discussed ins. - self ins.

Verbal agreement on bring back Tenn & Ky.

Exp. what all there go. to try and get.

Larry Said people would probably except this.

Steve M. What happens to Union Funds.

Marg. Give Money.

Doris Don't get it until 2 years after closing. Don't want to spend all the money. Int'l won't help.

Will help after we used all the money.

Amos Otto Formula for Severance Pay.

Jim Exp. formula Severance Pay figure under Service Award.

1985 - Yr. for Severance Pay go back 3 years.

Larry Contract says 10% of people laid off.

Doris Wants one actually push out the door.

Thad 4 days now.

Jim · $200.00 @ week divide by 7 days, 80% kicks in first day.-

Thad Presently you'd get $20.00

Jim Get the same thing.

Doris Just informational meeting. Let you know.

Vince P. Get L/O off after Jan 1991 if you get recalled would you now get retirement insurance.

Davis Right you wouldn't get it.

Davis Exp. paper handed out. Meeting with John Weber.

Exp. Trade Adjustment Assistance failed.

Filed with Company Effective Bargaining Letter.

That's when we discuss Severance Pay.

Nothing for sure on Severance Pay. Company will probably say no. Our lawyers say yes. Nothing goes into effect until they post 60 day notice.

Froggie: Get to Severance Pay.

R. Frye People with family should be only $200.00.

Daris It's a

Keith Have anything to do with paper. They had people sign.

Davis No.

Doris Exp. Severance Pay.

M.M. Do the Ex. Board agree with wages.

Bill So called a proposals. Gave us back in January.

Davis Exp. letter of Effective Bargaining. Sent letter - Rec'd answer won't until 60 day notice is posted.

Exp. paper.

O-5

No one is eligible until date is posted.

Severance Pay, nothing for sure.

NOTES FROM INFORMATIONAL MEETINGS DECEMBER 4, 1990

7:15 a.m. 3rd shift

1. Leo called Friday and said they were going out of business.
2. Read question and answers from meeting with Leo yesterday.
3. Be a lot of lay offs February 28th because that's when their going out of the tire business.
4. Will have people come to the Union Hall and sign up for unemployment.
5. TMR received the TAA letter.
6. Soon as notice is on board the schooling will be available.
7. Severance Pay will be decided in Effective Bargaining. If it isn't settle then will go to court.
8. If you need assistance call me here or at home or come to the Union Hall.
9. Campaign time is over. We'll do everything we can do for the membership.
10. Talked to International. Goodrich got Severance Pay in Effective Bargaining and had the same language in their contract that we have.

Questions Asked:

Q. Does everyone get Severance Pay?

A. No, not if your 55 years or older. We'll try for everyone in Effective Bargaining.

Q. Asked to get a lawyer to try and get Gainsharing.

A. The Union and Company was to get together and they didn't.

Q. Asked about double pay standard in Dept. 27?

A. Grievance's will still go on. They will be settled in Effective Bargaining.

Q. Could the Union response to answer from Ford and Chrysler that we are also customers and will think long and hard before we buy a car from them.

A. Good question.

Q. Asked about the meeting today of people with 29 years of seniority.

A. John Dyer told me about it. It will come out in Effective Bargaining. Everyone will be taking care of the same. It would be a waste of time to go to a lawyer.

Statement:

Bill said he talked to the state about the plant closing. Don't sign any contract for schooling unless it is covered by the state. A lot of the truck driving schools are not good. Wait until you find out the date from the company.

Q. Is it paid directly to the school?

A. Bill: Yes. You can upgrade your skill. Get your GED.

Jim: Tell them about the letter.

Bill: When the Warn Act posting goes up you are eligible.

Jim: Don't sign up until it goes up. Come here and talk to the people from the state.

Daris: There is certain qualifications to follow. Trade schooling is the best.

Q. Once the 60 day notice goes up if we quit for another job do you get Severance Pay?

A. If you quit you don't get Severance Pay. Don't pass it up. Won't say don't take it.

Jim: Your still eligible for a defer pension.

Q. People over 55 get Severance Pay. Make them get that to. If your being forced out we get it.

Jim: Read from the Pension and Welfare Book, page 91.

Jim: Explained if your eligible for pension you don't get Severance Pay.

Jim: Asked Larry what's up.

Larry: State and Federal law supersedes contract?

Q. Are you going to try to get it for people over 55 years old?

A. If there's a law to supersede we will.

Q. Rather than Severance Pay can we take our pension?

A. Question mark there.

Jim: Attorney say you can.

Q-1

GRIMM DEPOSITION
(pp. 23, 27, 35-39)

[Page 23]

Q. And what do they base this belief on?

A. They —.

ATTORNEY POST:

Well, I'll object to that question. Answer it if you can.

A. I can't speak to why they had that position.

BY ATTORNEY SMITH:

Q. Oh, let me see if I can rephrase that so that you can. Was the Union's position that the terms of the collective bargaining agreement, including the blue book pension and insurance and service award, entitled them to a service award?

A. Yes.

Q. That it was a contractual; right?

A. Yes.

Q. What was the Union's position with regard to waiver of earnings for pension?

A. Well, their position that it was limited to $6,000. They were requesting that that be modified or waived completely.

Q. Their position with regard to medical insurance?

A. Regarding medical insurance they wanted to substantiate that they had two months of company paid medical insurance after termination, an additional 12

[Page 27]

Q. Did the company ever calculate the service award amounts that employees would be entitled to under the calculation in the blue book?

A. I believe they did.

Q. Do you know who actually calculated those amounts?

A. That was calculated at the company in the Human Resource Department, but I'm unaware of who exactly calculated them.

Q. Do you know at whose request that was done?

A. I believe it was done at the request of TMR's management.

Q. Which would be?

A. It could have been Ken Smith or Jim Nelson.

Q. Did you ever see that document?

A. Yes, I did.

Q. And can you recall the amount of money that total amount was?

A. I would be guessing, but if my recollection serves me I believe it was probably in the vicinity of eight or nine million dollars.

Q. Did you ever use that document in negotiations?

A. We used it as examples of what the amount could be.

Q. And can you tell me when that happened, when

[Pages 35-39]

initially asked or provided a proposal concerning enhancing pension benefits. Later, as negotiations went on, we were still looking for a way that we could provide the Union with one of their main demands and that ended up to be money in their hand. So, we explored the option of lump sum pension payment. And it was at that particular time in discussions with the pension department that we wanted to know if it was feasible and what those amounts would be.

Q. You used the term enhancing pension benefits?

A. Yes.

Q. Can you tell me what you mean by that?

A. Enhancing pension benefits simply meant as far as we were concerned in these negotiations was taking a person's pension benefit and increasing it by a percentage.

Q. So, as I understand it, if someone—well, let me strike that. When you're talking about enhancing it by a percentage, you're not talking about enhancing a lump sum you're—or are you?

A. No, we're talking about an annuity—talking about enhancing an annuity. An example of that might be if an individual retired and was receiving $100 per month, a pension enhancement of 10 percent would give that individual $110.

Q. All right. I understand that. So, they would be looking at increasing the percentage of pension income that an employee would be able to receive upon reaching the retirement age?

A. It was increasing the amount that they would normally receive at retirement by adding additional monies to that amount.

Q. And the company would have come up with that money for that enhancement.

A. The pension fund would have come up with that money.

Q. I'm sorry. How would the pension fund have come up with that money?

A. The pension fund had an excess amount in it that they could take a portion of that money and use it to enhance the pensions of all the individuals at TMR.

Q. How much excess money was in that pension fund?

A. You're taxing my memory. I—I'm going to guess that the approximate amount was somewhere in the vicinity of 13 and a half million dollars.

Q. Was there a calculation to determine how much of that 13 and half million, the enhanced pension benefits would have taken up?

A. I am by no means a pension expert or an actuary. But my understanding was that the majority of that money would be taken up by federal excise and other taxes which would leave approximately two and a half to three million dollars that could be used, in effect, for the pension enhancement.

Q. Was there sufficient money in the pension fund to pay out the lump sun benefits?

A. Yes.

Q. And, in fact, did the lump sum benefits come from the pension fund?

A. The lump sum pension payments—

Q. Yes.

A. — came from the pension fund, yes.

Q. Was there still an excess in the pension fund subsequent to the payment of the lump sums?

A. I can't answer that question, I don't know.

Q. Do you know if there was any cost to Teledyne outside the pension monies involved in providing employees with a lump sum benefits?

A. Yes, there was a cost of providing that lump sum benefit.

Q. And did you testify earlier that that cost was the two and half to three million dollars?

A. I believe so.

Q. Do you know any more about the cost or is that outside your area of expertise?

A. I am not able to technically provide the reason of that cost. I understand it as a laymen.

Q. Could you tell me what you understand?

A. Well, the pension fund continually invests the money so that the rate of return provides the necessary amount of annuities that are due each and every eligible retiree. And my understanding is if you pay out the money in a lump sum initially it's similar to having an interest bearing checking account, that if you pay out the money early in the month rather than at the end of the month you lose that month's interest on that money in your checking account.

Q. So, when we're talking about two and a half to three million dollars, we're not talking about an out of pocket expense, we're talking about a lost of income to the fund?

A. In both cases it's the same thing. And the reason for that is in my mind, that once that fund is terminated completely and all monies are paid then that money is, in fact, Teledyne Monarch's. And, in fact, if it's not there then it's a loss and consequently to me it's one and the same thing.

Q. But in this case we are — the situation was that the money is paid out earlier and, therefore, the fund loses interest money put into it; is that correct?

A. They lose interest money and investment opportunities.

Q. Were you involved in any issue regarding a waiver of earning?

A. Yes.

Q. And can you tell me what the waiver of earnings refers to?

A. Waiver of earnings refers to the amount — when a person can collect their pension depending on how much money they've earned in any particular year. The current contract

provided for a limitation of $6,000. The Union's proposal was to eliminate that $6,000 so there was no waiver of earnings.

Q. So that that particular benefit would apply to employees that found subsequent employment?

A. It could. They may have other investments that could bring in income to that amount also.

Q. So, they had to be earning more than $6,000 a year before that would kick in?

A. Yes, uh-huh (yes).

Q. And in the plant closing agreement, that amount was raised to $10,000?

A. That's correct.

Q. What about a health insurance buy-out issue, were you involved in that?

CARPENTER DEPOSITION
(pp. 19, 36, 42-43)

[Page 19]

A. Not that I'm aware of.

Q. Throughout the effects bargaining what was the union's and the international's position with regard to severance pay — I'm sorry, with regard to the employee's entitlement to severance pay?

A. That we thought that we were entitled to severance pay, that's how we went into the negotiations, that we thought we had language in there to receive that.

Q. You had been a union employee from sometime in the 80's on. Was it your understanding that you were entitled to that special distribution or severance pay?

A. Yeah, that's what was my understanding which in the late 80's you really didn't think about it too much. I don't think you really become aware of it until the actual closure was announced.

Q. During the effects bargaining did you calculate the amount of severance pay each employee would receive under the formula that was given in the blue book?

A. Yes, I did that for the technical unit.

Q. Who asked you to do that?

A. I believe Daris asked us to do that.

Q. When you calculated that amount did you

[Page 36]

A. They held the offer.

Q. Can you tell me who from the company and what offer?

A. I don't know who from the company, but I believe Daris said that they still had the offer on the table.

Q. So Daris was the person that was involved in the meeting to bring this issue before the membership the second time?

A. I would believe.

Q. Did you ask Daris to have this meeting again?

A. Did I ask?

Q. Yes.

A. No.

Q. Do you have any knowledge of phone calls being made to the membership to ask if they would reconsider this plant closing agreement?

A. Yes.

Q. And tell me what you know about that, those phone calls.

A. I know that they made calls to the membership to ask them if they would reconsider a proposal.

Q. Who made the telephone calls?

[Pages 42-43]

Q. I just have a few more questions for you.

A. Okay.

Q. With regard to the special distribution contained in that blue book, did Mr. Nelson or any other representative of Teledyne during the effects bargaining meeting make a statement that that blue book and its provisions were not in effect or were void?

A. I don't recall if that statement was made.

Q. Did you continue to believe that you were entitled to that special distribution throughout the effects bargaining negotiations?

A. Through most of them we were negotiating in that direction.

Q. Did you ever come to believe that you were not entitled to that special distribution?

A. Personally you mean? Restate that question again.

(The Notary reach back as requested.)

THE WITNESS: No.

BY MS. SMITH:

Q. Why did you believe you were entitled to that special distribution?

A. Well, the way the language read in the book that's what we assumed that we were entitled to it, you know. What they offered at the end was just a pension buy out.

Q. The technical group that you were representing, did you ever tell them or did you tell them that they were entitled to that special distribution?

A. Did I tell them they were entitled to that?

Q. Yes.

A. I don't recall telling that exactly.

Q. Did you ever tell them that they were not entitled to that special distribution?

A. No.

Q. Did Daris Boggs ever present in effects bargaining meetings a plant closing agreement that would resolve all issues except for the severance pay issue?

A. No, I don't think so.

MS. SMITH: Mr. Carpenter, thank you very much, I'm finished.

THE WITNESS: Okay.

MR. POST: I have no questions.

MR. ARMSTRONG: I have nothing.

MR. HILKERT: You've got the right to go through it, but you have to indicate whether or

NELSON DEPOSITION
(pp. 45, 56-60)

[Page 45]

Q. But at that point they were still telling you that their position was they were entitled to severance or special distribution?

A. I think historically they have said that right along, uh-huh.

Q. Where were the meetings held with respect to that potential sale?

A. The Edgewater sale?

Q. Yes.

A. If I remember correctly it was primarily in the union hall.

Q. Did you ever attend a meeting that was held by the union for union employees with regards to the sale of the Edgewater — or sale to the Edgewater Group?

A. No.

Q. What is effective bargaining?

A. What?

Q. What is effective bargaining?

A. Effects bargaining

Q. Effects bargaining?

A. Under the law if you're going to close a operation down you have to engage in effects bargaining with the union.

Q. Did that occur at Teledyne in Hartville?

[Pages 56-60]

and say let's provide some kind of lump sum payment, that's what they want. We had talked about enhancing the pension agreement to get them more money and that was like a 12 or 10

or 12 percent increase in the amount they get each month but they weren't interested in that, they wanted cash.

So as a result of that particular discussion we went back to Teledyne and said look, is there any way we can make a lump sum payment out of the pension plan, and I think as a result of our efforts to meet their demands in providing this lump sum payment through the pension effort that's what satisfied their needs as far as this severance pay is concerned.

Q. When did you go back to the company and make that suggestion to them?

A. Sometime during the course of the negotiations.

Q. Middle, early, late?

A. I would say it would have been my position from the inception of negotiations that what our group wanted was cash, so from my standpoint probably I was a proponent of that from a strategy standpoint from the beginning. I know it was prepped and it was — it came back as no, absolutely no, we won't do it. And that is — as negotiations went on thinks got touchy. I know it was brought up again and it was reconsidered and at that point the decision was okay, let's consider it.

(Plaintiff's Exhibit 2 was marked for identification.)

BY MS. SMITH:

Q. I'm handing you what the Court Reporter has marked as Exhibit 2, and I will ask you if you can identify that document?

A. If I recall this is the document that the union sent out to all employees.

Q. Did you aid in the —

A. Yes.

Q. — compilation of this?

A. Yes. We helped on that and provided the copy.

Q. Sorry, you said —

A. We probably printed it for them.

Q. Did you provide any of the numbers in there?

A. I'm sure we did.

Q. Did you, in fact, create this document?

A. No, I think they basically came and said this is what they wanted to say and we — I think it was — if I recall it was their — what they wanted put out and then we just printed it for them on computer and inserted numbers that were a part of the negotiation.

Q. When you say we was that by your authority?

A. Oh, yeah, yeah, I would have had to authorize that. I'm sure John Grimm said during the course of the negotiation — it's been historically when we got to the end the union would ask, you know, will you help us print a summary or print this. And we had a printing department, and of course, we had some pretty good Xeroxing capabilities, so historically we have done that so we probably did it in this case. We probably made copies enough for their mailing.

Q. Did the company ever make any calculation as to the amount that most would be entitled to under the provision of this special distribution?

A. Yes.

Q. And when did they do that?

A. I don't recall. There was some discussion probably during this negotiation, I can't remember the exact date. I think at that point that's when there was some talk about changing the '79 to 85, so if we went through that computation we weren't— they were using the '79 number and we're using '85, them using '79, so we put some estimate as to when.

Q. You used '79?

A. We used '85.

Q. Although you testified earlier that you thought '79, what is correct then?

A. Well, '79 is the number that's been in the book and historically has been the number being —I've never officially changed that number. It's never been a subject of discussion, but when we got into the discussion as I recall in the effects bargaining there was some discussion, but when we got into the discussion as I recall in the effects bargaining there was some discussion about that, and somehow or another we said to be consistent to C let's use the '85 date.

Q. Who was responsible for calculating that amount?

A. Probably I would have delegated that to Kathy Hartong.

Q. That document was in your possession?

A. Yeah, I don't know if we ever—I don't know if we ever specifically sat down and discussed the numbers.

Q. Do you recall what the number was?

A. Oh, no.

Q. Did you ever —

A. If I was going to give you a guess it would be somewhere in the 8 million, 9 million range, but again, that's a guess. Unless I have the document in front of me I wouldn't want to trust my memory for numbers but my guess would be about that.

Q. There is a document that was printed up that calculates that amount.

A. There may be a document that was on the computer and whether the document that was on the computer and whether the document was preserved or whether the computer program is available now I can't say that for sure, I don't know. It certainly was part of the computer and it could have been printed

out. Where that computer is and that program is at this stage of the game I have no idea.

Q. Did you present document in effects bargaining?

A. I don't believe it was discussed. If my memory serves me correctly I don't think we talked about that number but I could be wrong there, it

CORRELL DEPOSITION
(p. 18)

[Page 18]

A. I don't recall any discussion, but our position was there wasn't any so I don't remember any discussion like that.

Q. You stated that you talked to Don DeGaspris regarding this particular section and severance pay in particular. What was the gist of those conversations?

A. I don't — if we had a discussion it would have been is anybody eligible and I don't really — I don't really remember if Don was — I don't remember when Daris came in as president so I may not have talked to Don about that.

Q. You don't recall anything?

A. No, I don't — no.

Q. What about your discussion with Mr. Kennedy on this particular subject, the severance pay. Was it Mr. Kennedy's opinion that employees were entitled to a severance pay?

A. Yes.

Q. Was Mr. — did Mr. Kennedy cite this particular section of the blue book as entitling these employees to severance pay?

A. Yes.

Q. And did Mr. Kennedy make any other statements with regard to the employees'

SENIORITY DEFINED
SECTION 1.27 TMR HOURLY PENSION PLAN

1.26 - Related Company

"Related Company" shall mean each corporation which is a matter of a controlled group of corporations (within the meaning of Section 1563 (a) of the Internal Revenue Code, determined without regard to Section 1563 (a) (4) and (e) (3) (C) thereof)of which the Company is a component member and each entity (whether or not incorporated) which is under common control with the Company, as such common control is defined in Section 414(c) of Internal Revenue Code and Regulations issued thereunder; provided, however, for purposes of this Plan the phrase "more than 50 percent"shall be substituted for the phrase "at least 80 percent" each place it appears in Section 1563(a)(1)of the Code. Said term shall also include each predecessor employer as required by Section 414(a) of the code.

1.27 - Seniority

"Seniority"shall mean preference or priority measured by length of service with definite rights qualifying Employees for employment when work is available, the purpose of which is to provide a declared policy of work security measured by length of service. Seniority shall terminate and all rights as an Employee shall terminate upon the occurrence of any of the following:

(a) Voluntary quit.

(b) Discharge for just cause.

(c) Retirement under the Pension Plan.

(d) Receipt of a service pay award.

(e) Absence for more than three (3) consecutive working days without permission or without a valid excuse.

(f) Failure to return to work within three days after the termination of any leave of absence.

1.28 - Service

"Service"shall mean each period, commencing on the Employee's Employment Date and continuing until the Employee incurs a Break in Employment which results

LIST OF 100 EMPLOYEES RECEIVING $10,000.00 SEVERANCE PAY IN 1988

Item #2

The Notice Posted By Human Resources Regarding Severance Allowance.

Notice

The attached list of 100 employees are those who will be eligible to elect a severance allowance of $10,000 each as defined in the list of affected persons. Details will be discussed at a meeting to be held at a future date.

Human Resources Dept.

June 23, 1988

Employees Laid Off After 12-17-87

~~302~~	~~Frances Grizzle~~	~~7-08-79~~	~~Didn't return form~~
831	Sophia Douglas	12-14-61	Pd.12/23
974	Charles Rollyson	6-08-70	Pd.12/23
120	Rudolph Kerezsi	7/23/70	1-6-89
450	Madlyn Miller	9-14-72	Pd.12/23
328	Betty Wycoff	9-19-72	Pd.7-8-88
~~978~~	~~Roberta Davidson~~	~~3-19-73~~	~~Didn't return form~~
603	Marilyn Hawk	8-01-73	8-12-88
604	Cleo Randall	8-01-73	Pd. 7-16-88
611	Rose D'Agostine	8-02-73	Pd.8-12-88
1431	Howard Hitchcock	8-22-73	Pd.7-29-88
1639	Nettie Harper	3-4-74	Pd.1-6-89
613	Barbara Watson	3-25-74	Pd.1-6-89
747	Barbara Carpenter	6-7-76	Refused buy out
793	Eva Edwards	7-26-76	Pd. 8-5-88
804	Janice Smith	7-27-76	Pd. 9-30-88
954	Earl Koellner	8-9-76	Pd. 9-23-88
1003	Rick Bruffy	8-11-76	Held 1/6? per court order
1449	Carol Tanksley	7-6-77	Refused buy out
1450	Diane Miller	7-6-77	Pd. 9-16-88
1464	John Machamer	7-11-77	Pd. 1-20-89
1496	Mary Silvey	7-21-77	Pd. 1-6-89
1501	Beverly Synder	7-25-77	Pd. 1-6-89
1544	Ron Biltz	10-6-77	Refused buy out
1602	Deborah Sommers	10-18-77	Pd. 1-20-89
1319	William Sparhawk	10-27-77	Pd. 1/6/89

1606	Faye Drager	11-7-77	Pd. 9-2-88
794	Tim Shafer	5-1-78	Pd. 8-12-88
1067	Sharlet Kurtz	8-28-78	Pd. 9-2-88
1116	Dewain Blakely	8-28-78	
324	Rosa Crockett	9-12-78	Pd. 7-29-88
396	Mary Bever	10-2-78	
433	July McCullough	10-3-78	
536	William Chler	10-9-78	Pd. 7-29-88
723	Donna Hysell	10-19-78	
635	Walter Scheks	10-23-78	Refused buy out
568	Duane Snyder	1-9-79	Pd. 10-21-88
325	John Steed	2-16-79	Pd. 8-12-89
855	Dewey Eaves	4-19-79	
856	Gearold Watson	10-17-79	Refused buy out
862	Joe Bailey	10-27-79	Pd. 7-8-88
~~899~~	~~O. Riedenbach~~	~~11-25-79~~	~~Didn't return form~~
~~890~~	~~Gary Cox~~	~~11-25-79~~	~~Didn't return form~~
900	Chris Carpenter	1-4-80	
~~906~~	~~Joe Braffuis~~	~~1-19-80~~	~~Didn't return form~~
670	Gaynette Hawkins	3-9-80	Pd. 7-7-89
666	Mary Jones	3-21-80	Pd. 7-29-88
371	Micheal Kuhn	6-11-80	
332	Iola Boykin	5-28-80	Pd. 7-29-88
398	Debra Keene	7-15-80	Pd. 8-19-88
~~455~~	~~Nadyne Kling~~	~~9-23-80~~	~~Didn't return form~~
419	Steve Konstantiou	9-28-80	Pd. 10-14-88
476	Corene Jones	10-5-80	Pd. 9-2-88

~~42~~	~~Russell Davis~~	~~7-25-81~~	~~Didn't return form~~
56	Norman Cruise	9-3-81	Refused buy out
542	Robert Asher	5-9-83	Refused buy out
1190	David James	5-9-83	Refused buy out
599	Nancy Ferguson	5-16-83	Pd. 11/18
811	Neval Chaney	5-16-83	Pd. 1-13-89
808	Michael Wright	5-16-83	Pd. 7-12-88 D.D.
1249	Mario DeMatteis	5-19-83	
877	James Knotts	5-19-83	
919	Harry Hayes	5-24-83	Pd. 8-19-88
929	Lynn Barbee	5-25-83	Pd. 1-20-89
944	Morris Ledford	5-26-83	Pd. 1-6-89
938	Larry Simmons	5-26-83	Pd. 12/23
995	Kirk Adamou	5-27-83	
945	Dave Buckeye	5-27-83	
~~984~~	~~Carol Pifer~~	~~5-27-83~~	~~Didn't return form~~
981	Rodney Stertzbach	5-27-83	Pd. 7-8-88
1026	Gary Louis	6-2-83	Pd. 1-20-89
1018	Roger Tallman	6-2-83	
1048	Dave Fagerstrom	6-3-83	Pd. 9-9-88
1069	Roie Easterling	6-6-83	Pd. 9-16-88
1055	George Armbrust	6-6-83	Pd. 7-8-88
1071	James Earnest	6-9-83	Refused buy out
1082	Sharon Trout	6-9-83	Refused 7-18-88 D.D.
1101	Earl Sanford	6-13-83	Pd. 9-16-88
1103	Carmel Blair	6-13-83	Pd. 8-12-88
1105	Virg. Hollyfield	6-14-83	Pd. 7-29-88

1114	Paul Shimek	6-15-83	Pd. 9-16-88
1128	Marg. Stowell	6-16-83	Pd. 7-29-88
1140	Curt Mumau	6-16-83	Pd. 9-9-88
1149	Shirley Brunner	6-20-83	
1150	Tom Keller	6-20-83	Pd. 7/22/88
1147	David Sharier	6-20-83	Pd. 9-9-88
1153	Paulette Wilson	6-20-83	Pd. 7-29-88
1160	Richard Moody	6-22-83	Pd. 7-8-88
1161	Mark Hall	6-23-83	Pd. 9-16-88
1171	Danny Stangelo	6-30-83	Pd. 8-5-88
1167	Wilmer Cogar	7-1-83	Pd. 7-7-89
80	James Darden	7-5-83	Pd. 7-29-88
1180	Joe Mytko	8-15-83	Pd. 8-5-88
1207	Earnest Bruce	8-22-83	Pd. 9-23-88
1209	Gary Theiss	8-22-83	Pd. 9-23-88
1206	John Tippell	8-22-83	Refused buy out
1225	Gerald Woodcock	8-22-83	Pd. 12/23
1232	George Resanovich	8-23-83	Pd. 8-12-88
1228	John Diettrich	8-24-83	Pd. 8-19-88
1230	Robert Snyder	8-24-83	Pd. 8-5-88
~~????~~	~~????~~	~~?-??-??~~	~~Pd. 7-13-88 D.D.~~
~~????~~	~~????~~	~~?-??-??~~	~~Pd. 7-13-88 D.D.~~

HARTONG DEPOSITION
(pp. 28-29, 31)

[Pages 28-29]

Q. You are aware that the union and the company bargained the plant closing agreement, correct?

A. Yes.

Q. To you knowledge does that plant closing agreement provide for retiree medical benefits?

A. For which retirees?

Q. For the retirees of the Hartville plant.

A. I've seen the affects bargaining agreement, but I don't know the details of that.

MR. POST: No further questions.

MR. ARMSTRONG: I have nothing.

MRS. SMITH: I have a couple of questions. I have just a few more questions for you.

RECROSS-EXAMINATION

BY MRS. SMITH:

Q. You stated before that there were changes made to this blue book over the years. Were these changes made as a result of the collective bargaining agreements that were negotiated every three years?

A. Yes, but there were also changes that were made that were based on ERISA.

Q. All right. And were these changes that were made — well, strike that.

Were there changes made for any other reason than those two reasons?

A. No.

Q. These changes that were made were these changes made in writing or were the changes reflected in writing?

A. They should have been, yes.

Q. And to your knowledge was there any writing reflecting any change with regards to Exhibit A contained in this blue book?

A. No.

Q. And you stated before that Jim Nelson interpreted number four special distribution and discontinuance of operations contained in Exhibit A of the blue book and that his interpretation was that the terms B and C both contradicted one another; is that correct?

MR. POST: I object to that. That misstates Miss Hartong's testimony.

BY MRS. SMITH:

Q. Well, can you tell me what Mr. Nelson's interpretation was?

A. No, I don't know his interpretation of paragraph four. I remember hearing his

[Page 31]

employees earlier that they were entitled and there is no testimony or other evidence in this record of that.

MR. HILKERT: Weli, let her answer the way it was asked.

THE WITNESS: I don't know.

BY MRS. SMITH:

Q. All right. Let me ask you if after 1989 TMR or the union ever informed employees in writing that there was any change to Exhibit A in the blue book?

A. No, I'm not aware of that.

MRS. SMITH: I have no further questions.

MR. POST: Nothing further.

MR. ARMSTRONG: Nothing further.

MRS. SMITH: Thank you.

MR. HILKERT: Are you having all these read?

MR. POST: Yes.

(Deposition concluded at 11:05 o'clock a.m.)

SEVERANCE PAY CALCULATED BY TELEDYNE

Hourly Active Employees and Employees on Sick Leave
Difference Between Service Award and Lump Sum
Payable 6/1/91 (TDY Figures)

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0001	William Swiger	44	26.5	24,003.80	18,600.00	5,403.80
0011	Kenneth Wolf	47	12.5	12,989.61	10,500.00	2,489.61
0016	John Dyer	54	26.9166	24,433.69	35,275.00	.00
0021	Russell Myers	42	22.4166	17,640.25	14,500.00	3,140.25
0046	Tony Kiser	47	23.75	24,112.30	19,975.00	4,137.30
0047	Dorothy Bixler	51	24,8333	16,653.23	26,825.00	.00
0051	Harold Thompson	49	27.4166	18,665.82	26,125.00	.00
0052	Rodney Cunningham	41	16.9166	13,443.53	10,500.00	2,943.53
0057	Glen Mobley	60	23.6666	29,441.38	51,575.00	.00
0059	Paul Vadasz	44	23.25	16,504.01	16,325.00	179.01
0062	Arnold Burley	56	26.5	20,054.69	48,325.00	.00
0069	James Kennedy	56	38.25	38,894.56	97,950.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0076	Dennis Bennett	50	26.5833	24,704.38	25,950.00	.00
0077	Paul Keener	56	36.25	31,003.33	92,825.00	.00
0078	Joyce Larocco	46	16.8333	12,171.16	13,325.00	.00
0106	George Adams	48	20.9167	17,772.58	18,725.00	.00
0115	Jake Rose	54	28.3333	34,494.51	37,150.00	.00
0117	Howard Woodburn	50	23.75	18,989.19	24,075.00	.00
0124	Harold Dobbs	51	19.25	13,871.33	20,800.00	.00
0134	William Weekly	46	28.8333	33,167.71	22,825.00	10,342.71
0135	Harvey Calhoun	42	19.0833	18,455.48	12,325.00	6,130.48
0141	Floyd Holbrook	60	23.8333	21,854.92	51,050.00	.00
0143	Earl Reynolds	54	27.4166	30,589.76	35,825.00	.00
0150	Ronald Marlatt	54	19.9166	13,970.23	26,100.00	.00
0152	Phillip Miller	46	19.25	22,541.26	15,225.00	7,316.26
0156	Donald Fulmer	57	34.8333	37,166.22	87,600.00	.00
0161	Joseph Steele	54	19.3333	21,316.16	25,325.00	.00
0165	Merle Kiener	54	32.3333	34,879.26	85,650.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0173	Edgar Anderson	55	24	24,513.80	42,525.00	.00
0182	Jimmie Kiser	57	25.3333	26.659.93	48,925.00	.00
0183	Donald Green	64	32.8333	39,985.86	70,900.00	.00
0194	Raymond Coury	60	25.3333	21,229.34	54,725.00	.00
0207	Earl Ford	48	21.8333	17,458.45	19,550.00	.00
0217	Betty Eller	61	31	22,023.03	71,875.00	.00
0227	Joe Sharp	39	18.6666	19,977.23	10,675.00	9,302.23
0230	Stephen Gehret	38	18.6666	16,793.39	10,250.00	6,543.39
0232	George Riddell	52	18.6666	15,796.93	21,500.00	.00
0233	Michael Elmerick	38	21	18,860.66	10,975.00	7,885.66
0235	Joseph Schaefer	55	35.58833	37,682.12	92,725.00	.00
0251	Wayne Fertig	59	31.75	24,631.78	76,800.00	.00
0252	Mary Patchin	45	18.6666	12,903.75	13,900.00	.00
0274	Donald May	58	32.5	37,062.08	80,200.00	.00
0292	Joseph Cook	52	18.5	15,852.50	21,300.00	.00
0295	Fred Boggs	43	18.6666	21,513.59	12,575.00	8,938.59

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0299	Jerry Davis	43	25.3333	26,796.73	17,075.00	9,721.73
0300	Daniel Vence	39	18.0833	15,686.98	10,350.00	5,336.98
0303	Tyrus Logan	51	31.9167	23,813.06	88,525.00	.00
0308	Wayne Robenstine	50	31.4166	23,112.21	08,375.00	.00
0313	Mike Bailey	36	18.6666	14,799.12	9,450.00	5,349.12
0314	Samuel Chuckery	48	18.6666	13,756.61	16,700.00	.00
0318	Leslie Evans	50	31.9167	36,404.15	89,800.00	.00
0320	Ellen Smith	44	18.6666	14,095.08	13,100.00	995.08
0321	Steve Matheos	37	18.3333	17,630.51	9,675.00	7,955.51
0322	Mark Mudrick	38	18.6666	16,265.28	10,250.00	6,015.28
0327	Lillie Kiener	55	29.75	22,397.15	52,400.00	.00
0329	Lenora Rusbarsky	59	18.1667	12,647.22	38,500.00	.00
0340	Dorothy Holland	52	18.1667	14,017.50	20,925.00	.00
0342	Larry Blessing	50	23.5	21,338.29	23,825.00	.00
0344	Linda Jones	41	18.1667	14,700.77	11,275.00	3,425.77
0355	Victoria Meadows	45	18.75	12,562.58	13,950.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0360	Harry Miller	44	18.75	17,323.13	13,150.00	4,173.13
0362	Fannie Williams	43	18.75	14,892.29	12,625.00	2,267.29
0374	Richard Oaks	45	25.9167	26,219.16	19,300.00	6,919.16
0379	Loren Wilson	50	26.0833	19,969.18	26,450.00	.00
0383	William Buerger	41	18.1667	12,796.67	11,275.00	1,521.67
0390	Richard Riley	4[illegible]	18.75	18,214.00	11,175.00	7.039.00
0393	Sharon Tessmer	49	27.75	24,082.91	26,425.00	.00
0397	Robert Johnson	46	22.6666	25,794.92	17,925.00	7,869.92
0408	Fred Mace	34	15.3333	9,846.17	7,150.00	2,696.17
0410	Julia Holbrook	57	18.75	13,877.29	35,825.00	.00
0416	John England	42	23.4166	18,801.83	15,150.00	3.651.83
0418	Timothy Smith	35	15.3333	10,700.75	7,450.00	3,250.75
0423	Jeffrey Machamer	37	18.5833	17,040.83	9,800.00	7,240.83
0428	Floyd Mullett	53	29.8333	25,782.48	36,550.00	.00
0439	Ralph Martin	52	30.4166	35,517.19	83,150.00	.00
0441	Barbara Wallbrown	53	15.3333	10,084.36	18,825.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0446	Gertrude Prater	59	15.333	10,889.18	32,475.00	.00
0452	Earnie Holbrook	38	20.3333	15,314.06	11,175.00	4,139.06
0456	Carl Fleischer	52	32,4166	28,877.05	88,600.00	.00
0457	Rudolph Marini	38	20.25	18,886.70	11,125.00	7,761.70
0461	Bernard Ogg	42	20	15,399.08	12,925.00	2,474.08
0462	Rosemond Purdy Jr	38	15,3333	9,532.28	8,425.00	1,107.28
0465	Edwin Fites	50	30.5	31,470.51	85,800.00	.00
0468	David Starcher	40	20	16,588.51	11,925.00	4,663.51
0470	Ronald Foster	50	18.6666	12,748.38	18,925.00	.00
0474	John Griggy	55	36.4166	36,443.52	?4,900.00	.00
0479	Garlan Carter	48	18.75	17,669.82	16,775.00	894.82
0483	Lois Holland	51	15.3333	11,234.06	16,550.00	.00
0484	Cecil Frazier	52	23.4166	20,482.80	26,?75.00	.00
0486	Janet Kirksey	57	15.3333	11,091.19	29,775.00	.00
0489	Edwin Wilson	56	37	40,126.90	94,750.00	.00
0499	Daniel Sycks	47	18.1667	13,332.25	15,275.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0502	Gary Miller	45	19.8333	21,998.32	14,700.00	7,298.32
0504	Mae Courie Fulks	53	26.75	18,146.88	32,850.00	.00
0511	Harold Morris	45	25.9167	21,227.89	19,300.00	1,927.89
0512	William Daniels	42	19.75	18,971.99	12,775.00	6,196.99
0514	Gary Mellows	46	19.75	16,072.60	15,625.00	447.60
0515	Randy Fulmer	37	15.3333	11,554.94	8,075.00	3,479.94
0520	Vincent Pesko	35	15.3333	12,706.83	7,450.00	5,256.83
0527	Matthew Weiderman	39	19.5	18,059.50	11,150.00	6,909.50
0528	Larry Whetsell	39	19.75	21,097.47	11,300.00	9,797.47
0529	Richard Smith	53	34.6666	35.354.35	93,325.00	.00
0531	Bonnie Thomas	54	15.3333	14,710.34	20,100.00	.00
0534	Albert McIntyre	55	19.0833	13,520.07	34,200.00	.00
0545	Jesse Garrison	35	15.3333	11,565.48	7,450.00	4,115.48
0546	Gary Adelman	34	15.3333	10,785.83	7,150.00	3,635.83
0547	Larry Jack	38	19.5	15,490.19	10,700.00	4,790.19
0549	Jerry Patchin	40	21.9166	22,593.30	13,050.00	9,543.30

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0550	Roy Heller	41	19.75	22,488.36	12.250.00	10.238.36
0551	Eugene Bair	54	23.4166	22,755.03	30,700.00	.00
0560	John Adcox	38	18.1667	12,872.14	9,975.00	2,897.14
0565	Walter Powell	38	19.0833	17,409.32	10,425.00	6,984.32
0567	Joanne Radsick	47	21.3333	15,316.28	17,950.00	.00
0570	Lora Wimer	37	15.0833	6,708.82	7,950.00	.00
0573	Jerry Muncy	46	25.3333	18,973.09	20,050.00	.00
0574	Keith Allen	52	31.75	38,627.60	86,775.00	.00
0578	Royden Shafer	38	19.5	16,358.75	10,700.00	5,658.75
0579	Ivan Simmons	57	38	38,992.74	95,575.00	.00
0580	Steve Haag	41	20.8333	15,921.31	12,925.00	2,996.31
0582	Richard Blackburn	35	15.0833	10,360.15	7,325.00	3,035.15
0583	Margaret Dixon	47	18.1667	13,510.28	15,275.00	.00
0587	James Apitz	48	29.8333	38,351.70	26,625.00	11,726.70
0589	Freddie Jones	38	15.0833	10,025.59	8,275.00	1,750.59
0598	William Monk	43	19.5	16,838.95	13,125.00	3,713.95

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0602	Bernice Mccoy	50	17.8333	12.515.97	18,075.00	.00
0609	Donald Callaghan	33	12.6666	6,797.52	5,675.00	1,122.52
0610	Judy Halman	38	14.9167	7,178.14	8,200.00	.00
0615	Sharon Culler	43	17.8333	9,825.24	12,000.00	.00
0618	Eli Hostetler	62	17.8333	16.079.23	40,400.00	.00
0619	Frank Stegh	60	22.0833	7,552.44	47,300.00	.00
0621	Thomas Carpenter	37	17.8333	12,077.90	9,400.00	2,677.90
0623	Paul Wilson	38	17.8333	16,391.02	9,800.00	6,591.02
0624	David Loshark	43	17.0833	21,208.63	11,500.00	9,708.63
0625	Robert Keener	58	17.8333	12,263.73	35,725.00	.00
0626	Michael Mesko	50	14.4166	14,648.35	14,625.00	23.35
0627	Hollie Carbaugh	54	2.25	.00	2,950.00	.00
0632	Milton Robertson	57	34.8333	37,629.36	87,400.00	.00
0634	Mike Paspalovski	50	13.3333	11,490.76	13,525.00	.00
0639	Kenneth Heinbuch	59	34.8333	26,143.83	84,275.00	.00
0653	Junior Hawkins	53	32.5	39,173.05	87,475.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0660	Richard Bowhall	61	28.75	29,074.90	66,125.00	.00
0661	Robert Fausnight	60	13.1667	13,779.63	28,575.00	.00
0667	Richard Espenschied	51	28.6666	78,060.87	30,975.00	.00
0671	Harry Schillig	38	17.8333	13,614.49	9,800.00	3,814.49
0673	Garry Miller	36	17.8333	13,261.69	9,025.00	4,236.69
0674	Jesse Garrison	60	28.6666	24,026.59	62,200.00	.00
0677	Jeff Friedman	32	11.25	6,095.21	4,850.00	1,245.21
0685	Paul Marshall	52	33.25	39,813.95	90,875.00	.00
0686	Ray Anstine	48	23.5	16,153.20	21,025.00	.00
0690	Leslie Golec	48	26.3333	21,685.88	23,575.00	.00
0696	Ronald Weisel	48	29.25	34,821.93	26,175.00	8,646.93
0701	Constanty Baxter	50	29.1667	30,717.77	29,575.00	1,142.77
0702	Barbara Weirich	55	29.6666	26,267.03	53,500.00	.00
0709	Charles Anderson	42	19	14,159.63	12,275.00	1,884.63
0711	Robert Lasch	40	21	14,516.17	12,500.00	2,016.17
0719	Ervin Zinn	60	26.6666	25,760.79	69,375.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0720	Deborah Roar	35	15	10,671.62	7,300.00	3,371.62
0724	Alonzo Berry	55	33.1667	37,751.11	86,425.00	.00
0725	Carl Buhite	58	20	14,026.43	37,700.00	.00
0733	James Fites	48	28.8333	26,284.90	25,800.00	484.90
0736	Martha Drake	59	31.25	21,735.17	75,600.00	.00
0737	Norma Sullivan	59	31.3333	28,769.25	75,800.00	.00
0743	Donald Ialarico	52	20.6666	37,853.20	34,175.00	3,678.20
0747	Barbara Carpenter	36	15	7,402.46	7,600.00	.00
0748	Larry Hankison	42	19	13,736.36	12,275.00	1,461.36
0749	Anna Greenweld	57	29.6666	28,377.12	58,925.00	.00
0750	Larry Jones	48	28.75	22,254.49	25,725.00	.00
0753	Morrie Hopson	35	15	15,536.91	9,300.00	8,236.91
0756	Glennis Lautzenhiser	55	29.75	19,715.70	54,250.00	.00
0757	Dave D' Agostine	35	15	11,106.98	7,300.00	3,806.98
0766	Troy Lindsay	51	21.9166	26,116.66	23,575.00	2,541.66
0767	Betty Boston	55	30.5	29,886.59	79,475.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0777	Robert Hoff	53	18.3333	14,356.05	22,525.00	.00
0786	Roy Barber	54	29.75	26,741.53	39,000.00	.00
0797	Steven Wallbrown	33	14.8333	10,391.10	6,650.00	3,741.16
0803	Clyde Avery	51	19.3333	19,658.64	20,875.00	.00
0807	Bobby Jarvis	37	18.25	13,557.26	9,625.00	3,932.20
0812	Robert Snyder	49	29.5833	29,908.55	28,175.00	1,733.55
0816	Ira Hemphill	49	20,9166	15,468.32	19,925.00	.00
0817	Jim Sharp	41	18.25	12,729.21	11,325.00	1,401.21
0818	Harold King	51	25.5	17,192.41	27,550.00	.00
0823	Ron Laughlin	34	14.8333	11,213.11	6,925.00	4,288.11
0824	Sandra Palmer	48	26.75	11,542.24	23,950.00	.00
0828	James Memmer	37	18.8333	20,409.25	9,925.00	10,484.25
0830	Ebon Vaughan	48	29.5	30,357.65	26,400.00	3,957.65
0833	Martin Carpenter	59	29.5	25,827.31	63,075.00	.00
0835	Lola Espenshied	52	29.4166	30,678.37	33,875.00	.00
0837	Virginia Wilkinson	56	23	12,786.88	42,400.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0838	John Poth Jr.	51	23.75	14,442.58	25,650.00	.00
0841	William Boles	38	18.8333	17,490.19	10,350.00	7,140.19
0845	David Mencer	50	28,75	28,604.61	29,150.00	.00
0847	Jeffrey Thurman	34	14.8333	11,098.03	6,925.00	4,173.03
0850	Michael McArthur	37	18.8333	18,328.52	9,925.00	8,403.52
0851	David Burke	33	13.0833	7,494.89	5,875.00	?,???.??
0854	David Marcin	51	28.75	26,501.63	31,050.00	.00
0855	Dewey Eaves Jr.	33	12.0833	7,632.45	5,425.00	2,207.45
0864	Earl Jones	60	28.75	21,576.46	61,575.00	.00
0865	Beverly Snyder	46	18.25	11,190.51	14,450.00	.00
0866	Harold Neff	41	21.75	18,624.30	13,500.00	5.124.30
0868	Willie Jones	62	21	20,113.64	47,575.00	.00
0869	Craig Weirich	37	18.8333	17,694.21	9,925.00	7,769.21
0870	Daniel Brenner	50	28.6666	35,881.12	29,075.00	6,806.12
0873	Thadis Tanksley	48	28.6666	36,702.51	25,650.00	11,052.51
0875	Mark Lemaster	34	14.6666	8,596.25	6,850.00	1,746.25

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0884	Lacy Berry	56	28.6666	23,801.68	54,025.00	.00
0891	Janet Starcher	47	18.25	14,659.73	15,350.00	.00
0898	Betty Kannal	59	26.75	22,945.00	57,975.00	.00
0902	Paul Rudolph	39	21	19,136.89	17,000.00	7,136.89
0903	Daryl Jones	36	13.0833	7,569.95	6,625.05	944.95
0908	Eugene Dye	46	26.1667	32,383.69	20,700.00	11,683.69
0910	Hartzell Ball	43	13.0833	9,699.33	8,800.00	899.33
0911	Evelyn Harlan	50	18.25	14,124.51	18,800.00	.00
0913	Wayne Williams	39	14.8333	9,618.56	8,475.00	1,143.56
0916	Graydon Harman	47	28.5833	29,340.49	24,050.00	5,290.49
0921	William Vancamp	46	26.75	30,708.08	21,175.00	9,533.08
0923	Doris Scott	60	28.5833	20,590.86	62,575.00	.00
0924	Danny Rose	37	18.8333	15,607.49	9,925.00	5,682.49
0925	William Heyard Jr	47	28.5833	25,967.72	24,050.00	1,917.72
0930	Annette Lloyd	52	28.5833	20,168.46	32,925.00	.00
0932	Paul Sollazzo	43	18.25	20,374.25	12,300.00	8,074.25

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0934	Keith Umberger	48	28.5833	26,726.98	25,575.00	1,151.28
0935	Carl Anderson	38	14.8333	10,660.63	8,150.00	2,510.63
0942	Tex Copen	44	26.5	21,484.52	16,500.00	4,984.52
0958	Shirley Pavazzo	55	26.75	24,735.60	49,350	.00
0962	Jim Rose	56	28.5833	23,313.18	53,000.00	.00
0964	John Biller	56	28.1667	21,085.75	54,525.00	.00
0967	Haskell Holbrook	53	23.6666	21,918.60	29,075.00	.00
0968	Donovan Whitaker	46	26.25	19,738.40	20,775.00	.00
0969	Melvin McClung	45	26.75	25,318.92	19,925.00	5,393.92
0971	David McCroskey	39	18.25	12,482.45	10,425.00	2,057.45
0976	Laynard McCarty	51	28.5	30,340.66	30,800.00	.00
0979	Leonard Kannal	38	18.8333	15,679.54	10,300.00	5,379.54
0983	Kenneth May	37	16.5	12,490.27	8,700.00	3,790.27
0985	Earl Boggs	47	23.6666	18,373.05	19,925.00	.00
0987	Donald Ries	54	27.9166	22,118.78	36,600.00	.00
0988	Richard Howe	44	21	13,282.35	14,750.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
0989	Donald Biltz	47	27.9166	35,228.64	23,500.00	11,728.64
0990	Roger Darnell	45	18.75	17,081.96	13,950.00	3,131.96
0991	David Malone	40	21.8333	18,085.25	13,000.00	5,085.25
0992	Randall Machamer	41	23.0833	18,506.83	14,325.00	4,181.83
0993	Paul Hall	51	28.4166	28,346.91	30,700.00	.00
0997	John Baker	42	21	19,507.46	13,575.00	5,932.46
0999	Harold Chidester	54	18.75	13,927.17	24,575.00	.00
1001	Derle Wages	47	16.4166	12,131.23	13,800.00	.00
1004	Ernest Asher	38	18.0833	16,561.86	9,925.00	6,636.86
1005	Thomas Butler	51	32.4166	35,914.58	89,925.00	.00
1006	Ruth Beck	54	14.8333	10,061.36	19,325.00	.00
1013	John Watkins	42	23.1667	17,578.37	14,975.00	2,603.37
1015	Daris Boggs	44	24.9167	22,481.23	17,500.00	4,981.23
1016	Roy Romine	44	18.6666	.00	13,100.00	.00
1017	Gordon Dawson	38	18.6666	20,506.29	10,250.00	10,256.29
1021	Curtis George	53	18.0833	13,098.60	22,200.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
1028	Rowland Purdy	39	21.8333	23,597.96	12,475.00	11,122.96
1031	Earl McClung	52	28.75	31,827.74	33,100.00	.00
1033	Eugene Hively	49	23.6666	20,147.91	22,550.00	.00
1037	Dewey Tharpe	52	25.75	25,217.49	29,650.00	.00
1039	James Siriimatter	45	25.75	20,455.04	19,175.00	1,280.04
1040	Amos Otto	51	23.5833	20,877.58	25,475.00	.00
1042	Robert Lancaster	50	25.75	29,784.84	26,125.00	3,659.84
1043	Gary Alexander	43	25.75	27,597.86	17,350.00	10,247.86
1044	Larry Alexander	45	25.75	23,245.33	13,175.00	1,070.33
1051	Harvard Garvin	53	25.75	26,109.26	31,625.00	.00
1053	Margaret Stinard	47	18.6666	12,446.26	15,700.00	.00
1054	Terry McClellan	44	23.25	23,206.01	16,325.00	6,881.01
1057	Edgar Collins	56	23.5833	17,886.81	43,000.00	.00
1058	Virgil Craig	49	18.0833	17,649.28	17,255.00	424.28
1060	Ralph Harman	45	23.5833	25,189.18	17,550.00	7,639.18
1061	Bennie Brienza	42	18.6666	15,760.70	12,075.00	3,685.70

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
1066	Carol Climes	46	18.6666	23,481.96	14,775.00	8,706.96
1070	Joseph Wasara	48	25.6666	28,018.83	22,975.00	5,043.83
1072	Terry Boggs	38	18.6666	16,514.27	10,250.00	6,264.27
1073	Bernie Bennett	45	25.6666	25,830.92	19,100.00	6,730.92
1075	Lester Woods	62	25.6666	24,173.14	58,150.00	.00
1076	Charles Keen	55	25.6666	18,099.63	14,950.00	.00
1077	Gerald Lamp	37	18.0833	14,592.32	9,525.00	5,067.32
1078	Robert Webb	42	23.5833	18,205.29	15,250.00	2,955.29
1079	Dale Kinsey	62	25.6666	24,405.02	58,150.00	.00
1080	Frank Melito	37	18.6666	16,645.48	9,850.00	6,795.48
1081	David Tierney	45	25.0833	21,658.16	18,675.00	2,983.16
1083	Floyd Daniels	49	25.6666	25,989.18	24,450.00	1,539.18
1085	William Cozart	36	14.75	9,392.83	7,475.00	1,917.83
1086	Harvey Gooch	44	23,1667	17,863.25	16,275.00	1,588.25
1089	Roger Carper	43	18.6666	18,092.50	12,575.00	5,517.50
1090	Louis Pinazza	57	18	17,501.08	34,950.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
1092	Warren Phillips	43	25.6666	20,942.15	17,300.00	3,642.15
1093	Kenneth Mckee	51	23.1667	18,209.62	25,025.00	.00
1096	James Barno	47	25.6666	23,408.50	21,600.00	1,808.50
1097	Gerald Lightner	49	25.6666	19,392.52	24,450.00	.00
1100	Patricia Monnot	40	18.6666	16,205.41	11,125.00	5,080.41
1104	Hobert Nichols Jr	52	25.5833	28,173.11	29,450.00	.00
1107	Richard Fritz	39	21.8333	19,161.26	12,475.00	6,686.26
1109	Calvin Combs	46	25.0833	23,270.70	19,850.00	3,420.70
1113	Gary Wilhelm	48	8	5,130.86	7,150.00	.00
1117	Ronald Summers	43	23.5	21,185.43	15,825.00	5,360.43
1119	Regis Perry	39	18.0833	19,611.44	10,350.00	9,261.44
1124	Eddie Street	36	18.6666	13,566.10	9,450.00	4,116.10
1129	Lewis Street	56	25.0833	24,336.56	47,025.00	.00
1130	Sheila Buffington	53	18.5833	12,895.54	22,825.00	.00
1131	Bobby Butler	54	25.5833	35,817.56	33,525.00	2,292.56
1132	Randy Smith	34	14.4166	10,751.52	6,725.00	4,026.52

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
1139	Kenneth Burnette	41	23.1667	27,130.83	14,375.00	12,755.83
1142	James Head	37	18.5833	14,046.81	3,800.00	4,246.81
1151	Carrie Huff	31	12.75	7,281.57	5,275.00	2,006.57
1152	William Garmier	43	25.5	17,129.73	17,175.00	.00
1155	Ronald Webster	45	24.8333	28,643.19	18,475.00	10,168.19
1159	Robert Frye	58	24.8333	19,215.89	50,500.00	.00
1162	Joseph Brown	42	23.0833	15,966.06	14,925.00	1,041.06
1163	Michael Slattery	41	20	13,658.95	12,400.00	1,258.95
1169	Kenneth Eichler	40	18.5833	20,657.58	11,075.00	9,582.58
1170	Bobby Bush	54	18.5833	17,456.40	24,350.00	.00
1172	Robert Swonger	48	23.0833	30,348.64	20,650.00	9,698.64
1178	Leroy Dilsaver	42	18.5833	19,126.17	12,00.00	7,126.17
1182	Jimie Freeland	56	24.75	17,428.94	47,150.00	.00
1183	Glen Sawyers Jr	44	14.6666	13,290.67	10,100.00	2,290.67
1185	Russel Youtz	42	24.75	23,292.70	16,000.00	3,235.70
1187	Joseph Nolan	64	7.853	3,810.40	14,800.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
1189	Gary Wallace	51	18.5833	15,332.33	20,075.00	.00
1193	Anthony Koellner	52	7.5833	4,305.78	8,325.00	.00
1197	Gary Thompson	41	21.75	15,974.89	13,500.00	2,474.89
1201	Bennie Crites	50	18.5	17,961.25	18,750.00	.00
1202	Jim Curry	42	23	23,122.49	14,875.00	8,247.49
1208	Charles Jackson	56	18.5833	14,890.74	34,250.00	.00
1210	Richard Kannai	42	24.6666	17,320.39	15,950.00	1,370.39
1214	Ray Kiser	45	20.4166	14,291.31	15,200.00	.00
1216	William Dean	43	24.6666	28,308.11	16,625.00	11,683.11
1218	Fred Percy Jr	45	20.4166	16,165.28	15,200.00	965.28
1223	David Boggs	39	20.4166	18,820.75	11,675.00	7,115.75
1224	Francis Fankhauser	61	19.8333	15,555.96	44,675.00	.00
1231	Elizabeth Alexander	44	18.5833	11,489.39	13,050.00	.00
1237	Gary Rush	42	24.5833	16,431.57	15,900.00	531.57
1238	Ronald Kuhn	44	24.5833	19,362.89	17,250.00	2,112.89
1244	Joseph Mathie	49	18.5833	12,638.64	17,700.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
1246	James Thompson	51	18.5833	12,824.50	17,00.00	.00
1255	Ronald Park	42	22.9166	20,031.07	14,825.00	5,206.07
1256	Reed Points	43	18.5833	13,787.56	12,525.00	1,262.56
1258	Forrest Phillips	58	18.5833	12,719.00	38,700.00	.00
1261	Joseph Marchi	38	18.5	14,213.27	10,150.00	4,063.27
1262	John Ketron	57	24.5833	23,166.03	47,225.00	.00
1271	Kenneth Laughlin	58	21.75	24,034.71	45,300.00	.00
1279	Donald Radsick	42	23.1667	20,993.64	14,975.00	6,018.64
1280	Robert Ohman	44	24.5	20,005.28	17,200.00	2,805.28
1281	Joann Finch	56	18.5	12,684.45	34,475.00	.00
1282	Nancy Johnston	38	18.5	12,554.14	10,150.00	2,404.14
1290	Marsha Youtz	47	18.5	15,608.07	15,575.00	33.07
1293	Helen Bruner	48	23.75	18,638.22	21,250.00	.00
1297	Bernard Koehler	50	18.5	16,470.00	18,750.00	.00
1300	Shirley Repik	51	23.75	14,826.01	25,650.00	.00
1304	Clifford Carver	46	7.75	4,352.44	6,125.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
1320	Leslie Whited	54	22.9166	18,009.62	10,025.00	.00
1325	Donald Degasperis	41	21.6666	21,321.83	13,450.00	7,871.83
1331	Glenn Woods	40	17.9166	13,892.46	10,625.00	3,267.46
1332	Roy Moon	48	17.9166	13,017.07	16,025.00	.00
1334	James Church	56	7.6666	6,468.01	11,150.00	.00
1336	Donald Carpenter	38	17.9166	15,024.69	9.800.00	5,224.69
1338	Ronald Brimlow	43	17.9166	16,942.87	12,000.00	4,940.87
1339	Robert May	40	21.6666	18,850.45	12,900.00	5,950.45
1340	George Darlas	42	17.9166	17,248.28	11,575.00	5,673.28
1345	James Ickes	40	17.8333	14,882.64	10,625.00	4,257.64
1370	Terry Beceh	36	17.8333	16,005.73	9,025.00	6,980.73
1380	Dianna Machamer	41	17.8333	13,361.86	11,075.00	2,286.86
1381	Gerald Trout	35	17.8333	13,068.42	8,675.00	4,293.42
1385	Steve Rosak	36	17.8333	13,194.81	9,025.00	4,169.81
1389	Ben Dyer	59	22.8333	21,433.39	48,175.00	.00
1399	Todd Kovacs	40	21.6666	17,238.20	12,850.00	4,388.20

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
1400	Lloyd Miller	41	22.8333	17,936.51	14,175.00	3,361.51
1404	Jimmy White	44	22.75	15,166.75	15,975.00	.00
1412	Gary Roach	48	17.8333	12, 129.57	15,950.00	.00
1423	Ronald Mikes	38	17.75	16,194.22	9,750.00	6,444.22
1426	Otto Greenwalt	44	22.75	18,756.98	15,975.00	2,781.98
1434	Carl Strahler	41	22.75	18,512.05	14,125.00	4,387.05
1438	Kenneth Anderson	44	22.6666	20,096.11	15,225.00	4,171.11
1441	Hugh Garvin	51	21.5	13,918.41	23,225.00	.00
1449	Carol Tanksley	46	13.9166	9,041.96	11,000.00	.00
1452	Karl Youngblood Jr	47	17.75	21,070.40	14,925.00	6,145.40
1463	Ronald Tescher	46	22.6666	18,201.74	17,925.00	276.74
1465	Daniel Hoffman	42	17,9166	13,302.38	11,575.00	1,727.38
1469	Chalmer Clark	50	22.6666	22,203.44	22,975.00	.00
1480	Lovell Jones	36	17.6666	18,560.40	8,950.00	9,610.40
1481	Donald Denney	44	18.5	16,689.15	12,975.00	3,714.15
1483	Edgar Hall	56	21.5	20,166.52	18,835.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
1487	Larry Ritchie	43	21.25	12,760.63	14,325.00	.00
1493	David Ford	42	18.5	10,540.75	11,950.00	.00
1497	Jerry Carpenter	36	17.9167	13,032.46	3,075.00	3,957.46
1511	Ronald Lankford	48	22.6666	21,329.99	20,275.00	1,054.99
1514	David Webber	44	13.8333	9,741.08	9,700.00	41.08
1516	Robert Kuhn	39	19	21,620.82	10,875.00	10,745.82
1521	Gary Lewis	40	19	15,663.42	11,325.00	4,338.42
1526	Glenn Minger	43	21.75	19,892.56	14,650.00	5,242.56
1527	Charles Estep Jr	43	20.5833	15,012.56	13,875.00	1,137.56
1530	Craig Miculan	43	19	18,076.13	12,800.00	5,276.13
1533	Gene Johnston	41	21.3333	16,919.91	13,250.00	3,669.91
1536	Rickey Zerbe	44	21.3333	15,795.52	14,975.00	820.52
1538	William Ringer	45	22.5	15,835.46	16,750.00	.00
1541	Edward Oyster	56	13.75	11,866,59	25,775.00	.00
1545	Daniel Caslow	44	21.5	16,088.75	15,100.00	988.75
1547	Lynn Besse	52	21.5833	19,422.29	24,850.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
1550	Ronald Green	32	13.6666	12,739.27	5,900.00	6,839.27
1551	Donna Lavy	37	18.8333	15,611.44	9,925.00	5,686.44
1583	Phillip Yoder	37	12.6666	7,969.97	6,675.00	1,294.97
1587	Richard Wilmoth	39	17.6666	11,470.13	10,100.00	1,370.13
1600	Fred McGavern	39	17.75	11,919.83	10,150.00	1,769.83
1613	Bill Yakubik	36	17.75	14,433.06	9,000.00	5,433.06
1621	Kevin Lahm	36	17.6666	15,403.25	8,950.00	6,453.25
1627	Inez Rollyson	53	17.3333	13,016.01	21,275.00	.00
1629	Gerry Hopson	44	17.3333	11,464.84	12,175.00	.00
1648	Daniel Cunningham	37	16.5833	13,735.11	8,750.00	4,985.11
1655	Charlotte Colbath	55	17.5833	12,232.73	31,325.00	.00
2401	Willie Virden	45	24.5833	8,354.53	18,300.00	.00
2402	Vernon Serle	42	23.25	9,122.69	15,025.00	.00
2403	Robert Oeffner	44	23.25	8,656.74	16,325.00	.00
2404	Frank Carr	38	19.25	6,919.60	10,575.00	.00
2405	Daniel Wally	44	17.667	6,761.98	12,050.00	.00

Emp. No.	Emp. Name	Nearest Age 1-1-91	Years of Service on 6-1-91	Amount of Service Award	LUMP SUM (TDY)	Difference Serv. Award Lump sum Tdy.
2406	Rodney Newlin	40	13.5833	3,929.66	8,075.00	.00
2407	Russell Smith Jr	35	12.8333	3,777.61	6,225.00	.00
2408	[illegible]t Barbone	32	11.9166	3.754.09	5,125.00	.00
2409	Daniel Greer	31	11.5	3,484.47	4,750.00	.00
R234605874	Donald Nichols	54	31	35,648.08	82,125.00	.00
R269466759	Timothy Weisel	43	24.5	23,225.21	16,500.00	6,725.21
R283383565	Arlene McClung	48	25.5	25,758.21	22,825.00	2,233.21
T287446631	Terry Sells	45	19.3333	22,352.39	14,400.00	7,352.39
420 Listed				7,822,544.65	10,???,425.00	1,041,463.31

Reoprt name: DIF.SERV.AW/LUMP.SUM

SMITH NOTES FROM APRIL 15, 1991 EFFECTS BARGAINING

TMR Effects Bargaining
Monday, April 15, 1991

The following represents the plan for the next effects bargaining session:

Reaffirm Teledyne's previous position regarding Retiree Medical and Service Awards. To reach a closing agreement, Teledyne would offer the following:

* Enhanced Pension Benefits

  - All active employees will be vested in the pension plan.
  - This benefit would affect all retirees plus all active employees.
  - Pension benefits will be increased by approximately 12%.

** Alternative to Enhanced Pension Benefit

* One-Time Pension Benefit

  - This benefit would affect all active employees at plant closing.
  - One-time cash benefit of $2,500 per employee.

* Either option requires a plant closure agreement providing appropriate releases for all liability for any employee benefits.

If union questions the lack of retiree medical benefits under the One-Time Pension Benefit, we can offer to look at possible benefit options for retirees for the later meeting.

Our objective of this meeting is to offer an option of Enhanced Pension Benefit $ or One-Time Pension Benefit for the union to study and give input in the following session.

K.D.Smith
4-10-91

ODDSON DEPOSITION
(pp.15, 30-31,41)

[Page 15]

measures of the liability, so you really need to —

Q. Is that plan going to be terminated?

A. I don't know.

Q. At this point is it an ongoing plan?

A. Yes.

Q. You said that you look at it depending upon whether it would going to be terminated or whether it was going to be ongoing. Looking at that plan as an ongoing plan what's the status of the funding?

A. The plan is not over-funded on an ongoing basis.

Q. Is it operating in the red?

A. Well, just because it's not fully funded doesn't necessarily mean it's operating in the red, but I'm not sure what you mean by pension plan operating in the red.

Q. Well, what is the — do you have a — strike that.

How much money is in that pension plan at this time?

A. As of January 1, 1992 the market value of the assets for that plan was approximately 35 million dollars.

Q. Where is that money?

[Pages 30-31]

satisfied then there is a 50 percent excise tax in addition to the income tax before any reversion to the plan sponsor. If, on the other hand, there is an enhancement or an improvement in the benefits that uses up 20 percent of the surplus then the excise tax is reduced to 20 percent. So one of the scenarios that the company was considering was if the plan was terminated and if there remained a surplus should the plan benefits be improved.

Q. And was there, in fact, a surplus at that point in time?

A. Our estimate of the liabilities indicated that if the plan were terminated then there would have been a surplus, yes.

Q. Do you recall how much?

A. Well, it's impossible to say because it ultimately depends on what the insurance companies quoted as a cost, but it would have been somewhere in the neighborhood of 13, 13 and a half million dollars.

Q. Now, the enhanced pension benefit. Under enhanced pension benefits it states it will be increased by approximately 12 percent. Would that have entitled Teledyne to take that 20 — actually 30 percent break in taxes or tax liability?

A. Let me answer that this way. If the benefits were improved by approximately 12 percent the liability that that improvement have created would have been approximately 20 percent of the surplus. And therefore, if the plan had been terminated in conjunction with this improvement the excise tax, yes, would have reduced from 50 to 20 percent.

Q. And is the one of the reasons that this 12 percent number was picked, because it would, in fact, equal 20 percent in enhancement or a cost of 20 percent?

A. That's the only reason that number was picked.

Q. Okay. Were you in favor of providing an enhancement and terminating the plan?

A. At this time I can't recall that I formed an opinion about whether the plan should be terminated or not.

Q. Were you in favor of providing an enhancement?

A. Certainly not if the plan weren't terminated and I hadn't — so if the only time you're going to do an enhancement is if the plan is terminated and I hadn't form an opinion about

[Page 41]

Q. And excise tax is just that.

A. Well, it's slightly different that what I discussed earlier because now instead of a 13 and a half million dollar surplus as we had in the question a few minutes ago, buying out retiree medical and putting in that benefit increase you no longer have that kind of surplus, you have a much smaller surplus, so the excise tax is reduced also.

Q. Okay. The federal income tax?

A. The federal income tax of 1.6 million should be 34 percent of that reduced surplus.

Q. And the reversion to Teledyne, 2.2 million. What do you mean by reversion to Teledyne, where would —

A. If a pension plan is terminated and all of the liabilities are satisfied, that means that you provide the benefits to all the participants that they're due. Whatever is left after you pay the appropriate taxes reverts to the plan sponsor.

Q. Okay. And the plan sponsor in this case?

A. Is Teledyne Industries.

Q. Your second item, it says only a general benefit increase. What does that mean?

A. Well, that appears to be a similar scenario to the top line except that the — it does

JUNE 10, 1991 LETTER TO PETITIONERS
RE: LUMP SUM

Larry Whetshell
2809 Waterloo Road
Mogadore, Ohio 44260

To All Affected Employees:

1. The plant will close June 16, 1991.
2. No pension or seniority shall accumulate after June 15, 1991.
3. The Company will not contest unemployment claims.
4. Employees on sick and accident shall continue to get this benefit until disability ends or fifty-two (52) weeks benefits paid starting with the date of sick leave.
5. Employees shall work to closing or until laid off and shall be entitled to the following:
   A. Unused vacation.
   B. Insurance two (2) months, twelve (12) months, then ten (10) months COBRA.

      Option to buy out your insurance:

      $500.00 Single

      $1,000.00 Family

   On page two (2) is the list of insurance coverage.

   C. Option lump sum buy out of pension:

      If you elect to take your vested pension as a lump sum payment, the estimated actuary amount of the lump sum will be $11,300.00.

      If you do not take the lump sum, your vested pension at 65 years will be $355.50 per month.

D. If buy out pension, will not have retiree insurance.

E. Retiree insurance will be capped at:

i. Single $131.87

ii. Family $333.13

iii. Medicare $130.69

Review of preview every July starting in July, 1992, if there is a change.

F. If employees do not take the pension buy out and are eligible for an immediate pension, they shall have lifetime insurance benefits.

6. Earnings limitation on $200.00 supplement raised from $6,000 to $10,000.00

NOTICE RE: JUNE 14, 1991 VOTE ON PLANT CLOSING AGREEMENT

URW

Local Union No. 99
United Rubber, Cork, Linoleum & ~~~
Plastic Workers of America, AFL-CIO, CLC

210 Grand Trunk, P.O. Box 665
Hartville, OH 44632
216/877-2985

Daris G. Boggs, President
Jim Kennedy, Vice President
Dorothy L. Bixler, Secretary
Kenneth J. May, Treasurer

BB-1

SPECIAL UNION MEETING

DATE: 6/14/91 TIME: 10:00 A.M.

PLACE:

LAKE HIGH SCHOOL
1025 LAKE CENTER ST., NW
HARTVILLE, OHIO

DISCUSSION AND VOTE ON
EFFECTIVE BARGAINING PACKAGE

PLEASE PARK BY THE HIGH SCHOOL

Daris G. Boggs

DARIS G. BOGGS
LOCAL # 99 PRESIDENT

DATE POSTED: 6/10/91

United for Freedom

SEPTEMBER 6, 1991 BOGGS LETTER TO RETIREES

Local Union No. 99
United Rubber, Cork, Linoleum &
Plastic Workers of America,
AFL-CIO, CLC
210 Grand Trunk, P.O. Box 666
Hartville, Ohio 44632
216/877-2985

September 6, 1991

Dear Local 99 Retiree:

In the course of negotiation of the closure agreement at Teledyne Monarch this spring, Local 99 set as one of its highest priorities the protection of your medical benefits. We are happy to inform you that we negotiated a closure agreement which provides you with lifetime medical benefits.

Because of the importance of this in your life, we thought it was essential that you be formally notified by both the Union and the Company regarding this. A general outline of the terms of the agreement are stated in the Company's letter.

If you have any questions about this now or in the future, please contact me at the office (216) 877-2985 or at my home (216) 877-1405.

Fraternally yours,

/s/
Daris G. Boggs, President
URW Local Union No. 99

DB:dr/opeiu 339
cc: Legal Department, Int'l Union
John Grimm, Assistant Director,
Human Resources, Teledyne
Brad Smith, Esq.
James M. Nelson, Vice President
Human Resources, Teledyne Monarch Rubber

NOTICE RE: JUNE 28, 1991 VOTE ON PLANT CLOSING AGREEMENT

URW

Local Union No. 99
United Rubber, Cork, Linoleum &
Plastic Workers of America, AFL-CIO, CLC

210 Grand Trunk, P.O. Box 666
Hartville, OH 44632
216/877-2985

Daris G. Boggs, President
Jim Kennedy, Vice President
Dorothy L. Bixler, Secretary
Kenneth J. May, Treasurer

DD-1

SPECIAL UNION MEETING

DATE: 6/28/91 TIME: 10:00 A.M.

PLACE:

LAKE HIGH SCHOOL
1025 LAKE CENTER ST., N.W.
HARTVILLE, OHIO

RECONSIDERATION TO VOTE.

Daris G Boggs

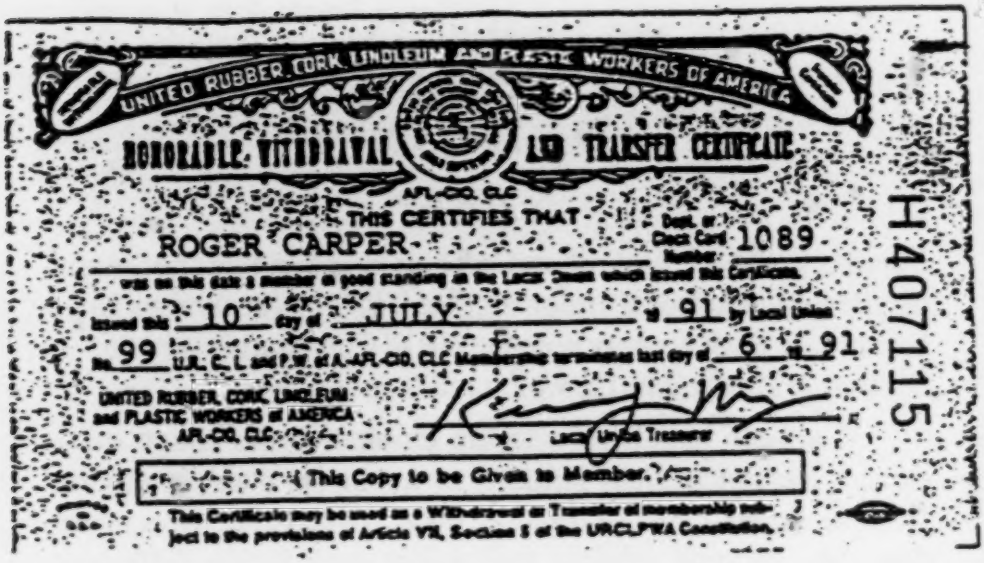
DARIS G. BOGGS
LOCAL # 99 PRESIDENT

DATE MAILED: 6/24/91

United for Freedom

EE-1

HONORABLE WITHDRAWAL CARD



UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA

HONORABLE WITHDRAWAL AND TRANSFER CERTIFICATE

AFL-CIO, CLC

THIS CERTIFIES THAT

ROGER CARPER

Dues or Check Card Number 1089

was on this date a member in good standing in the Local Union which issued this Certificate.

Issued this 10 day of JULY, 91 by Local Union

No. 99 U.R., C., L. and P.W. of A.-AFL-CIO, CLC Membership terminates last day of 6 91

UNITED RUBBER, CORK, LINOLEUM and PLASTIC WORKERS of AMERICA AFL-CIO, CLC

Local Union Treasurer

This Copy to be Given to Member.

This Certificate may be used as a Withdrawal or Transfer of membership subject to the provisions of Article VII, Section 5 of the URCLPWA Constitution.

H 407115

JANUARY 22, 1990 LETTER RE: HONORABLE WITHDRAWAL CARDS

Local Union No. 99
United Rubber, Cork, Linoleum &
Plastic Workers of America,
AFL-CIO, CLC
210 Grand Trunk, P.O. Box 666
Hartville, Ohio 44632
216/877-2985

January 22, 1990

NOTICE

Members who are laid off and wish to maintain their rights and privileges in the Local Union and the URW by receiving a Dues Exemption must comply with the URW Constitution Article VI, Section 3, Paragraph (b), which reads as follows:

"Laid-off members who are entitled to the above mentioned exemption shall request, in writing, a dues exemption from the Local Union Treasurer within ninety (90) days of the date they become eligible and within each ninety (90) days thereafter. In the event any such member fails to request a dues exemption within said ninety (90) day period, he shall be issued an Honorable Withdrawal and Transfer Certificate effective as of the last day of the month in which his dues were paid or for which he was issued a Dues Exemption Receipt."

In addition, be advised of Article VII, Section 5, Paragraph 8, Sub-paragraph (d):

"Members to whom Honorable Withdrawal and Transfer Certificates have been issued forfeit all rights and privileges in the Local Union and the URW."

/s/
Daris G. Boggs
President, Local 99

/s/
Kenneth J. May
Treasurer, Local 99

GG-1

IN THE UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN R. ADCOX, et al.

Plaintiffs

-vs-

TELEDYNE, INC. et al.

Defendants

CASE NO. 5:91 cv 2521
JUDGE BELL

AFFIDAVIT OF DOROTHY BIXLER

Affiant, being first duly sworn, deposes and states as follows:

1. I am an adult (D.O.B. 08-28-39) and competent to make this Affidavit.

2. I am a Plaintiff in the instant case titled Adcox, et al. v. Teledyne, Inc., et al., Case No. 5:91 CV 2521.

3. I worked for the Defendant, Teledyne Industries, Inc., Teledyne Monarch Rubber Division (TMR), or its predecessor, from 1959 until 1965 as a non-union office employee, and from 1966 to June 14, 1991 as a union member employee.

4. From 1966 until 1991, I was a member of United Rubber, Cork, Linoleum and Plastic Workers of America International Union (URW) and United Rubber Workers Local Union No. 99 (Local 99).

5. While employed by TMR, and as a member of the URW and Local 99, I served as secretary of the Local 99.

6. The URW and Local 99 represented to me and other union members that as employees of TMR when the plant closed in June 1991, we would be dues exempt for one year; and that

we would retain our union membership until our interests under the Collective Bargaining Agreement had been resolved and Local 99's business interests and assets had been settled.

7. In July 1991, the URW and Local 99 issued Honorary Withdrawal cards to all members of Local 99 except Daris Boggs, Jim Kennedy, Ken May, Bill VanCamp and myself.

8. The bylaws of Local 99 required that a monthly meeting be held as long as there are eleven (11) or more members.

9. As a result of this issuance of the Honorary Withdrawal cards, no union membership meetings were held after June 1991.

10. Of the Plaintiffs in the instant action, more than two-thirds (2/3) are not employed by a successor company of Teledyne Monarch Rubber.

FURTHER AFFIANT SAYETH NAUGHT.

/s/
DOROTHY BIXLER

STATE OF OHIO

ss.

COUNTY OF SUMMIT

Sworn to and subscribed in my presence this 9th day of , November 1992.

/s/
KATHERINE C. SMITH
NOTARY PUBLIC

EXCERPTS FROM URW CONSTITUTION (pp. 56-57, 116-117)

[Pages 56-57]

ARTICLE VIII, Section 2 (continued)

the Local Union before making any request for assistance to the Officers of the International Union.

(f) Each Local Union shall be held liable for all per capita taxes or other monies due the International Union when said monies have been collected by the Local Union Treasurer but no remitted to the International Secretary-Treasurer.

(g) A Local Union shall not make application to the National Labor Relations Board (or to the appropriate agency of the Canadian government) for an election to determine the collective bargaining agency until and unless a full report of the situation has been filed by the Local Union and the District Director with the International President or his/her designated representative and he/she has approved the filing and said application.

(h) Each Local Union shall have a press corespondent to supply news of the Local Union's activities to the monthly publication of the International Union.

(i) Each Local Union shall hold a regular meeting at least once each month. What shall constitute a quorum for regular meetings shall be established by the Bylaws of each Local Union.

1 The foregoing notwithstanding, a Local Union may cancel regular monthly meetings not to exceed three (3) each year. Such cancellation shall not be for more than two (2) consecutive months. All monthly reports of such cancelld meetings shall be made at the monthly meeting following the canceled meeting or meetings.

(j) Special meetings of the membership of a Local Union may be called and conducted only in accordance with the provisions of this Constitution and may be called by the Local Union President, the Local Union Executive Board while in session, or by the membership itself by a majority vote of the members present at a regular meeting of the Local Union. The provisions of the Local Union Bylaws respecting the number of members necessary for a quorum at regular meetings shall also apply to special meetings. Notice of such special meeting must be given to the membership of the Local Union at least twenty-four (24) hours before said meeting convenes except as provided in Article V. SECTION 2. Paragraph (d), and Article VIII, Section 5, Paragraph (a), Sub-paragraph 3, in which cases a longer notice is required. Notices of the meeting must state clearly the purpose of said meeting and no other business shall be transacted at such special meeting.

(k) In the event a Local Union fails to perform the duties imposed upon it by this Constitution, the International Executive Board is empowered to appoint, after appropriate notice to the Local Union and after a hearing has been conducted by the International executive Board, an Administrator to take over and administer the affairs of such Local Union until the Local Union is prepared to perform the duties imposed upon it and to exercise its powers, consistent with this Constitution.

(1) Local Unions are encouraged to assist members who have been retired for employment in their efforts to arrange meetings of such retired members and to provide facilities for such meetings.

NOTE:REFER TO ARTICLE XII.

(m) Each Local Union shall establish a Political Education Committee. This Committee shall consist of no less than three (3) in number, one of which shall be the **Chairperson.**

(n) Each Local Union shall establish an Organizing Committee. This Committee shall consist of no less than three (3) in number, one of which shall be the **Chairperson.**

SECTION 3 - Local Union Monthly Membership Dues:

(a) The monthly dues of a Local Union shall be not less than ten dollars ($10.00) per month per members as provided in Article VI, Section 2, Paragraph (a) of this Constitution.

(b) By following the procedures of this Paragraph (b), increases and reductions may be made in the amount of Local Union monthly membership dues. Reductions may be made in the amount of Local Union monthly membership dues to the extent of but not to exceed the sum of fifty cents (50¢)in any twelve (12) month period. In addition, if requested by the Local Union following approval as required by this Paragraph (b), the International

[Pages 116-17]

ARTICLE XVI
RULES OF ORDER

SECTION 1 - Rules:

(a) During the temporary absence of any Local Union officer from a meeting of the Local Union when the performance of his/**her** duties is necessary at that meeting, the President shall appoint a member to serve pro tem. In the absence of the President from a Local Union meeting the Vice President shall automatically perform his/**her** duties. In the absence of both President and Vice President the Secretary shall call the Local Union meeting to order and the Local Union shall elect a temporary **Chairperson.**

(b) Sectarian discussion shall not be permitted under any circumstances.

(c) When a member desires that debate be stopped and a vote be taken, he/**she** may call for the previous question. When

this is done it shall be put to a vote at once in this form: "Shall all debate be closed and the question or questions to which the motion to cease debate is applicable be voted upon?"

If this carries by a two-thirds (2/3) majority vote, then a vote shall at once be taken on the question before the meeting.

(d) When an appeal is made from a decision of the Chair, the Vice President shall then act as **Chairperson.** Said appeal shall then be stated by the **Chairperson** to the meeting in these words:

"Shall the decision of the Chair be sustained as the decision of this Local Union?" The member will have the right to state the grounds of appeal and the Chair will give reasons for his/**her** decision. Thereupon the members will proceed to vote on the appeal without further debate and it shall require a majority vote to sustain such an appeal.

(e) A question can be considered only at the same meeting or at the next regular meeting. If reconsidered at the same meeting a majority vote is sufficient. If reconsidered at the next meeting, a two-thirds (2/3) vote is required except as provided later in this Paragraph. A motion to reconsider must be made and seconded by members who voted with the majority. The question of approval of a collective bargaining agreement or an amendment thereto, once having been rejected, may be reconsidered and approved at the same meeting or at any later special or regular meeting by a majority vote.

(f) If a motion has been amended then the amendment shall be voted upon first. If more than one amendment has been offered then the vote shall first be on the amendment to the amendment, next on the amendment to the motion, and last on the original motion.

(g) A motion to lay on the table, or read a paper or document, or to adjourn is not debatable.

(h) All resolutions and resignations must be submitted in writing. Resolutions or resignations may be withdrawn by the person submitting same at any time prior to action having been taken thereon.

(i) If a meeting of a Local Union is scheduled and a quorum is not present, business cannot be transacted but such meeting shall be regarded as a meeting having been held for purposes of determining attendance at meetings.

(j) All other parliamentary questions not decided in these rules shall be decided in accordance with Robert's Rules of Order.

ARTICLE XVII
CONSTITUTION

SECTION 1 - Conflicts, Corrections and Legislation:

(a) Any federal, state or provincial law now existing or hereinafter enacted which conflicts with any part or parts of this Constitution, as amended, shall supersede that part or parts of the Constitution which are or become illegal, but shall in no way affect the balance of this Constitution.

(b) Any laws or parts of laws in conflict with this Constitution, as amended, are repealed: and any provisions of this Constitution that are in conflict with amendments adopted at the Thirty-Fourth International Convention are superseded; and the Interna-

AUGUST 6, 1991 LETTER FROM BOGGS TO PETITIONERS

Local Union No. 99
United Rubber, Cork, Linoleum &
Plastic Workers of America,
AFL-CIO, CLC
210 Grand Trunk, P.O. Box 666
Hartville, OH 44632
216/877-2985

August 6, 1991

Dear Brothers & Sisters,

The purpose of this letter is to keep you informed about the company's position on the plant closure agreement. There have been no major new developments, however, the company recently informed me that their prior offer will remain open until August 15th. They also made a very minor improvement to that offer.

> In reference to Paragraph 6, sub-paragraph b, - the one-time lump sum buy-out of the twelve (12) month Company-paid medical insurance coverage will increase from $500.00 Dollars for a single plan to $600.00 Dollars for a single plan and from $1000.00 Dollars for a family plan to $1200.00 dollars for a family plan.

It appears our choices are either to accept the offer or litigate. I am taking this survey to determine whether there is sufficient interest in this agreement. Please indicate on the enclosed card by marking yes or no and returning it by mail no later than August 14, 1991. This is not a vote. It is a survey.

Fraternally yours,

/s/

Daris G. Boggs
President URW Local 99

DGB/db

AUGUST 14, 1991 LETTER RE: AUGUST 22, 1991 VOTE ON PLANT CLOSING AGREEMENT

Local Union No. 99
United Rubber, Cork, Linoleum &
Plastic Workers of America,
AFL-CIO, CLC
210 Grand Trunk, P.O. Box 666
Hartville, OH 44632
216/877-2985

August 14, 1991

Dear Local 99 Member:

By now all of you should have received and had ample time to respond to the letter we sent out on August 6, informing you of the company's last offer. That offer was the same offer that explained at our June 14 meeting with one change. That change was increasing the medical insurance buy-out from $500 to $600 for an individual plan, and increasing it from $1,000 to $1,200 for a family plan.

At this time, a majority of those who have responded have indicated that they desire the opportunity to vote on this offer.

Therefore, there will be a special meeting held solely for the purpose of voting on this offer on Thursday, August 22, 1991 at the Union hall. On that day the polls will be open from 6:00 a.m. until 7:00 p.m.

As you are all aware if the offer is rejected, our only recourse is litigation. Because of the impact this vote will have on your future, we urge each of you to come out and vote and to encourage others to do the same.

If you have any questions about the offer or the meeting on Thursday, feel free to call the Union Hall.

Fraternally yours,

/s/

Daris G. Boggs, President
URW Local Union 99

DGB/db
cc: URW Legal Department
James Wyle, International Representative

PLANT CLOSING AGREEMENT

THIS AGREEMENT, made this 26th day of August, 1991, by and between TELEDYNE MONARCH RUBBER (the "Company") and THE UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA and its Local Union 99 (Production and Maintenance Unit) [together, the "Union"].

WHEREAS, the Company and the Union are parties to a collective bargaining agreement, effective January 1, 1988, covering the terms and conditions of employment of Employees represented by the Union and employed by the Company at its plants in Hartville, Ohio (the "Hartville Plant"), which agreement expired at 12:01 A.M. June 16, 1991; and

WHEREAS, the Company, pursuant to the applicable provisions of the collective bargaining agreement, notified the Union on or about October 24, 1990, concerning its tentative decision to close the Hartville Plant; and

WHEREAS, the Company notified the Union and affected Employees on January 30, 1991, of its final decision to close permanently the Hartville Plant, effective June 16, 1991; and

WHEREAS, the Company and the Union met thereafter to negotiate the effects of the closing on the affected Employees; and

WHEREAS, the Company and the Union now desire to enter into a Plant Closing Agreement setting forth their agreement on the terms and conditions that shall govern the closing of the Hartville Plant and the termination of the Company's Employees represented by the Union ("Employees").

NOW, THEREFORE, the Company and the Union, for itself and the Employees, intending to be legally bound, hereby agree as follows:

1. The Hartville Plant collective bargaining agreement between the Company and the Union that became effective on

January 1, 1988 terminated on June 16, 1991. All other agreements between the Company and the Union at the Hartville Plant terminated on June 16, 1991, except as may be provided in this Plant Closing Agreement.

2. Affected Employees were terminated on dates selected by the Company, with no seniority or pension service accrual after the termination date. In all cases, Employees' effective termination date shall be no later than June 16, 1991 at 12:01 a.m.

3. The Company agrees not to contest the issue of lack of work in unemployment insurance claims of eligible terminated Employees, with the exception of Employees, if any, who were discharged for cause.

4. The Company agrees that Employees sick and accident benefits or who become entitled to sickness and accident benefits prior to the termination date, will continue to receive said benefits under the provisions currently in effect, which is a maximum of fifty-two (52) weeks from commencement of benefits, or until released by a doctor, whichever is earlier.

5. Employees actively at work at the Hartville Plant as of January 30, 1991 who worked up to the date when terminated by the Company, are eligible to participate in the following:

a. Accrued, unused vacation pay according to the terms and conditions of the applicable collective bargaining agreement.

b. Employees who are not eligible to receive retirement benefits by July 1, 1991 and who do not elect a lump-sum payment under paragraph 5(c) shall receive Company-paid medical insurance coverage for two (2) months following the month of such termination; In addition, those employees may elect to receive either twelve (12) months Company-paid medical insurance coverage, in the amount of Six Hundred ($600.00) Dollars for a sin-

gle plan and One Thousand Two Hundred ($1,200.00) Dollars for a family plan. Such election must be made by September 16, 1991. At that time, an Employee may select a date for payout of the lump sum, no later than January 1, 1992. All employees whose Company-paid medical insurance coverage ceases shall be offered "continuation coverage" at their expense, as required under applicable provisions of COBRA, the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Internal Revenue Code of 1986, as amended (the "Code").

c. All eligible Employees shall have the option to elect to receive a lump-sum payment of the present value of their accrued benefit under the Company pension plan in accordance with the terms, as amended. The option to receive a lump-sum payment must be exercised by September 16, 1991 on a form prescribed by the Company. The form shall give the Employee an option to receive the lump-sum payment, on a date no later than January 1, 1992. Otherwise, the Company will issue payment within forty-five (45) days of the date of Employee's notice of exercise.

d. Those employees who are eligible to receive a retirement benefit by July 1, 1991 and who elect a lump-sum payment under Paragraph 5(c) hereinabove, shall not be eligible for Company-paid retiree medical insurance.

e. Company contributions for retiree medical benefits for current retirees and those who elect to receive a retirement benefit prior to July 1, 1991 (which shall be the level in effect on June 15, 1991), shall be capped at the premium level currently in effect as follows:

(i) Single - $131.87/month - under 65

(ii) Family - $333.18/month - under 65

(iii) Medicare carveout - $130.69/month - per individual over 65

f. Those Employees who are eligible to receive a retirement benefit by July 1, 1991 who do not elect a lump-sum payment under Paragraph 5(c) hereinabove, their spouses and eligible dependents, shall be eligible to receive the retiree medical benefit Company contribution set forth in Paragraph (e) above. Such benefit shall continue in accordance with the provisions of the Company retiree medical benefit plan in effect at the time of Employee's retirement. Such contribution shall be adjusted to reflect any changes in the Employee's coverage under the terms of such plan (for example, upon the death of a family member, or a covered person's attainment of Medicare eligibility, or a covered person's ceasing to be a spouse or dependent). Any future increases in retiree medical insurance costs above the Company contribution levels will be the responsibility of the retiree. The Company will review annually, the costs of retiree medical insurance and shall notify retirees of any increases if necessary. The first annual review shall be effective on July 1, 1992.

g. Those Employees who are not eligible to receive a retirement benefit by July 1, 1991 and who decline a lump-sum payment under Paragraph 5(c) hereinabove shall not be eligible for any Company contributions towards retiree medical benefits.

h. It is expressly understood and agreed by the parties that the Company's undertakings under Paragraphs 5 (b)-(g) above discharge in full any claim by the Union or any Employee, former Employee or retiree, or any person claiming through any Employee, former Employee or retiree, for medical insurance coverage or benefits beyond

June 16, 1991 except as may be specifically provided for under said Paragraphs 5 (b)-(g). The Union expressly acknowledges that said Paragraphs set forth in full all rights that Employees, former Employees and retirees have with respect to medical insurance or benefits from the Company beyond June 16, 1991, and that no other such rights exist under any other or previous agreement or understanding between the Union and the Company.

6. Effective January 1, 1991, the Waiver of Earnings Limitation under the Company pension plan shall be increased from Six Thousand ($6,000.00) Dollars to Ten Thousand ($10,000.00) Dollars for all those who first become eligible for a retirement benefit after January 30, 1991.

7. Except as otherwise expressly provided herein, the rights of Employees to pension benefits shall be covered by the terms of the Company pension plan.

8. The Company and the Union agree that the Special Early Retirement Benefit shall be deleted from the Company pension plan as being unlawfully discriminatory.

9. Any disputes arising under this Agreement shall be referred to a grievance committee to be composed of two representatives of the Company and two representatives of the Union. Should the grievance committee be unable to resolve any dispute within thirty (30) days, the parties agree to refer the same to binding arbitration.

10. This Agreement resolves completely, any and all grievances, claims, suits or causes of action by the Company against the Union or any Employee, or by the Union or any Employee against the Company or any employee, officer, agent, parent, subsidiary or affiliate of the Company, concerning employment, operations or the cessation of operations and employment, at the Hartville Plant, including, without limitation, all pending grievances and unfair labor practice charges (includ-

ing charges referred to arbitration). Further, this Agreement is in full discharge and settlement of all Company obligations and Employee or Union claims under any agreement including any Service Award, Early Retirement benefit or any employment-related local, state or federal law, including, without limitation, ERISA, the National Labor Relations Act, the Labor-Management Relations Act, Age Discrimination in Employment Act, and the Workers Adjustment and Retraining Notification Act, except for obligations arising under this Agreement or health-related claims such as workers' compensation claims. By excluding claims from the release, the parties are not suggesting any such claim is valid; the intent is only to exclude such claims for purposes of the Agreement.

11. This Agreement represents the complete agreement of the parties concerning the subject matter hereof, and supersedes any prior agreements or representations, oral or written.

IN WITNESS WHEREOF, the Company and the Union have caused the Agreement to be executed this 26th day of August, 1991.

Attest:

_____

TELEDYNE MONARCH RUBBER

By:_____

By:_____

By:_____

Witness:

_____

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA

By:_____

By:_____

By:_____

Witness:

_____

URW LOCAL 99
(PRODUCTION &
MAINTENANCE UNIT)
By:_____
By:_____
By:_____

medical benefits were eligible to receive immediate retirement benefits on July 1, 1991. Hundreds of persons retired prior to January 30, 1991 also receive retiree medical benefits.

4. Identify by name and address each TMR hourly employee who opted to receive a "buy-out" of $600.00 or $1,200.00 in lieu of receiving continued health benefits.

RESPONSE: Teledyne Defendants object to Request No. 4 on the grounds that it is neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence and, to the extent the information requested concerns individuals other than named Plaintiffs, said information is confidential. Without waiver of the foregoing objections, Teledyne Defendants respond that 160 TMR hourly employees chose to receive a buy-out of $600.00 or $1,200.00 in lieu of receiving continued health benefits in accordance with Paragraph 5 of the Plant Closing Agreement.

5. Identify by name and address each TMR hourly employee who opted to receive a lump sum pension amount.

RESPONSE: Teledyne Defendants object to request No. 5 on the grounds the information sought is neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence and, to the extent the information requested concerns individuals other than the named Plaintiffs, said information is confidential. Without

waiver of the foregoing objections, Teledyne Defendants respond that 359 TMR hourly employees chose to receive a lump sum pension amount.

6. With respect to the persons named in your answer to Interrogatory No. 5, state the date when each person made the decision to receive a lump sum amount as evidenced by a dated signature on the document authorizing/requesting said lump sum payment.

RESPONSE: Teledyne Defendants object to Request No. 6 on the grounds the information sought is neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence and, to the extent the information requested concerns individuals other than the named Plaintiffs, said information is confidential. Without waiver of the foregoing objections, Teledyne Defendants

AUGUST 27, 1991 DENIAL OF PROTEST

United Rubber, Cork, Linoleum &
Plastic Workers of America,
AFL-CIO, CLC
International Union
87 South High St.
Akron, Ohio 44308-1893
216/376-6181

August 27, 1991

Mr. Keith Brendlinger

RE: Protest

Dear Mr. Brendlinger:

I am writing to respond to the letter of protest which you delivered to me on August 27, 1991.

After a thorough investigation of your allegations, I have determined that the proposal was fully explained to the membership and that a majority of the Local 99 membership voted for the closure agreement.

Therefore, I have determined that the agreement was properly ratified, and subsequently signed by the parties.

Sincerely,

/s/ _____
Daris Boggs, President
URW Local Union 99
DB: clc
opeiu 339

cc: International President Coss
Legal Department
District Director Prewitt
International Representative Wyle

NN-1

REQUEST FOR RECONSIDERATION

Local 99 President Daris Boggs.

We the undersigned wish to have a meeting with you and the executive board of Local 99.

This matter pertaining to the answer on our protest that we have received. We feel that our questions were not answered.

Sincerely,

Keith Brendlinger
John R. Adcox

SEPTEMBER 4, 1991
DENIAL OF REQUEST FOR RECONSIDERATION

Local Union No. 99
United Rubber, Cork, Linoleum &
Plastic Workers of America,
AFL-CIO, CLC
210 Grand Trunk, P.O. Box 666
Hartville, OH 44632
216/877-2985

September 4, 1991

Dear Keith Brendlinger;

I am writing in response to your letter which was delivered to me on September 4, 1991. At this time, there technically is no Executive Board. Therefore, your request is moot.

Sincerely,

_____
Daris Boggs, President
URW Local Union 99

DB: clc
opeiu 339

PP-1

APPEAL

To the International President:

We the undersigned, are protesting the vote held by Local #99 union officials on August 22, 1991. We feel this meeting was held in violation of Articles in the Constitution. They are Article VII, section 5 (a) and Article VII, section 7 (a). These articles and sections explain our complaint against the Union. They let retirees and members issue an honorable withdrawal card vote.

The Union officials also held this meeting without informing the members of what they were voting on. The letter was sent out only informing the members of the company's offer of $200.00 more for insurance for married couples and $100.00 for a single person.

Without discussing any of the proposal offered by the company, we feel the members were deceived into a vote. This being the case, we feel this vote should be null and void.

We the undersigned, and being former members of Local #99, voted on this proposal once before. The last vote was supposed to be the last. This proposal was to be sent to arbitration and to court. The plant closure entitled us to a service award, pension, and other benefits.

We feel a full investigation into how local officials handled the company's proposal was not in the best interest of the entire membership.

Sincerely,

_____

_____

QQ-1

APPEAL

Attn: International President Mr. Cross
Second Protest

We would like to protest the vote taken on 8/22/91. We feel that there were illegal people that voted from Monarch Industrial. We feel this vote was held in violation articles in the Constitution. They are Article VII, section [???] and Article VII, section 7 (a). These articles and actions explain our complaint. This is our *second protest.* We feel that we did not receive a proper answer on our first protest, and we are demanding a proper answer on our first and second protest that we have filed. We would like a meeting with you, if possible, to discuss the response that Mr. Boggs gave us. Mr. Coss, could you please help advise us in the right direction in this matter, and other matters pertaining to our protest.

Sincerely,

_____

_____

RR-1

OCTOBER 2, 1991 DENIAL OF APPEALS

United Rubber, Cork, Linoleum &
Plastic Workers of America,
AFL-CIO, CLC
International Union
87 South High St.
Akron, Ohio 44308-1893
216/376-6181
FAX 216/434-5230

October 2, 1991

Keith Brendlinger
Rick Adcox
c/o URW Local 99
P.O. Box 666
Hartville, OH 44632

Dear Brothers:

I have reviewed your protest regarding the conduct of a closure agreement ratification vote at Local 99.

After doing so, I must find that pursuant to Article IV, Section 3 of the URW Constitution that your "protest" is not properly before me. That Section provides that the International President resolves disputes referred to him by individual members. Your protests indicate that you are no longer members and non-members have no standing to refer a dispute to the International President.

I should add that at this time, the closure agreement has been signed and implemented by the Company. It is therefore a binding, lawful agreement and I have no authority to nullify that agreement.

Furthermore, it is my understanding that all Local 99 members who were affected by the plant closure were permitted to vote both times. This would have given all affected employees a meaningful say in how their futures would be impacted by the plant closure.

Finally, I know this has been a very difficult and frustrating time for you and all Teledyne Monarch employees. I sincerely hope that you can put this behind you and move ahead to a more positive phase of your lives.

Fraternally,

_____

Kenneth L. Coss
International President

KLC: dr/pr
opeiu 339
C/ Vice President Stanley
Secretary-Treasurer Ellison
District 1 Director Prewitt
International Representative Wyle
Local 99 President Boggs

SS-1

APPEAL

To: International President-Coss
Secretary-Treasurer-Ellison

Pursuant to your October 2, 1991 response to our first and second protests regarding the illegality of the 8-22-91 vote, we request that these protests be taken to the next step in accordance w/the Union Guidelines. Please note Article VII section 5 in the constitution pages 46, 47, 48 in regarding our protest.

Your response that our protests are inappropriate due to the fact that we are no longer members does not make sense since we are protesting the 8-22-91 vote when we were also non-members.

We await your response.

Fraternally,

_____
John R. Adcox

_____
Keith J. Brendlinger
10-08-91

OCTOBER 31, 1991 LETTER OFFERING LUMP SUM

Teledyne, Inc.
1901 Avenue of the Stars
Los Angeles, California 90067-6046
(213) 277-3311

October 31, 1991

Ms. Susan Kritz
12161 McCallum Avenue
Alliance, Ohio 44601

RE: Teledyne Monarch Rubber Hourly

Dear Ms. Kritz:

This letter is in response to your [???], 1991 requesting a lump sum distribution of your [???] Teledyne Monarch Rubber Hourly Pension Plan. According to the closing agreement between the union and Monarch Rubber, only employees who were "actively at work at the Hartville Plant as of January 30, 1991" are currently eligible to elect a lump sum.

Our records indicate (and I have confirmed with Monarch Rubber) that you were not actively employed at the Hartville Plant on that date. Therefore you are not currently eligible to elect to receive a lump sum. Teledyne has decided, however, to offer a lump sum payment to those participants in the Plan whose lump sum value of their pension benefit is less than $10,000.00. We anticipate that individuals who are eligible for this lump sum payment will receive a letter by June 30, 1992. This letter will provide you with all the information and forms necessary to elect a lump sum payment of your pension benefit. Payments are expected to be made in 1992.

Sincerely,

/s/

Deborah J. Simmons
Retirement Benefits Analyst

DJS:rva

STATUTES CITED

§ 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

(June 25, 1948, c. 646, 62 Stat, 928; June 27, 1988, Pub.L. 100-352, § 2(a), (b), 102 Stat. 662.)

§ 1291. Final decisions of district courts

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a different review may be had in the Supreme Court. June 25, 1948, c. 646, 62 Stat. 929; Oct. 31, 1951, c. 655, § 48, 65 Stat. 726; July 7, 1958, Pub.L. 85-508, § 12(e), 72 Stat. 348.

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

(As amended Oct. 21, 1978, Pub.L. 94-574, § 2, 90 Stat. 2721; Dec. 1, 1980, Pub.L. 96-486, § 2(a), 94 Stats. 2369.

§ 1337. Commerce and antitrust regulations: amount in controversy, costs

(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: *Provided, however*, That the district courts shall have original jurisdiction of an action brought under section 11707 of title 49, only if the matter in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where a plaintiff who files the case under section 11707 of title 49, originally in the Federal courts is finally adjudged to be entitled to recover less than the sum of value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of any interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) The district courts shall not have jurisdiction under this section of any matter within the exclusive jurisdiction of the Court of International Trade under chapter 95 of this title.

(As amended Oct. 20, 1978, Pub.L. 95-456, § 9(a), 92 Stat. 1633; Oct 10, 1980, Pub.L. 95-417, Title V, § 505, 94 Stat. 1743; Jan. 12, 1933, Pub.L. 97-449, § 5(f), 96 Stat. 2442)

§ 159. Representatives and elections—Exclusive representatives; employees' adjustment of grievances directly with employer

(a) Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of

employment, or other conditions of employment: *Provided*, That any individual or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

§ 185. Suits by and against labor organizations

Venue, amount and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purpose of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts if its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the Purposes of actions and proceedings by or against labor organizations, in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purpose of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

June 23, 1947, c. 120, Title III, § 301, 61 Stat. 156.

§ 1132. Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

LISTING OF PETITIONERS

The names of the Petitioners are: JOHN R. ADCOX, GARY M. ADELMAN, GARY ALEXANDER, LARRY M. ALEXANDER, CHARLES ANDERSON, KENNETH ANDERSON, RAY ANSTINE, ERNEST K. ASHER, CLYDE T. AVERY, MICHAEL R. BAILEY, EUGENE BAIR, JOHN. R. BAKER, JAMES M. BARNO, CONSTANTY J. BAXTER, LYNN BESSE, ANITA J. BIONDI, DOROTHY L. BIXLER, RICHARD R. BLACKBURN, DAVID BOGGS, EARL BOGGS, FRED D. BOGGS, TERI BOGGS, WILLIAM L. BOLES, KEITH BRENDLINGER, RONALD BRIMLOW, JOSEPH BROWN, HELEN BRUNER, GARY A. BRYANT, SHEILA D. BUFFINGTON, KENNETH W. BURNETTE, BOBBY G. BUSH, NETTIE M. BUSH, BOBBY R. BUTLER, HARVEY P. CALHOUN, DONALD CARPENTER, THOMAS M. CARPENTER, ROGER CARPER, GARLAN E. CARTER, DANIEL LEE CASLOW, JAMES S. CHURCH, CHALMER CLARK, CAROL CLIMES, CALVIN COMBS, JOSEPH F. COOK, TEX EARL COPEN, WILLIAM M. COZART, VIRGIL B. CRAIG, SHARON M. CULLER, JAMES CURRY, DAVE A. D'AGOSTINE, FLOYD DANIELS, WILLIAM DANIELS, ROGER DARNELL, GORDON A. DAWSON, JR., LEROY C. DILSAVER, MARGARET A. DIXON, HAROLD E. DOBBS, LUTHER EUGENE DYE, JOHN DYER, KEN EICKLER, MICHAEL C. ELMERICK, JOHN W. ENGLAND, LOLA M. ESPENSCHIED, JEFFERY C. FRIEDMAN, RICHARD FRITZ, RANDY ALLAN FULMER, STEPHEN GEHRET, LESLIE FRED GOLEC, HARVEY E. GOOCH, RONALD W. GREEN, STEPHEN C. HAAG, PAUL E. HALL, JUDY J. HALMAN, GRAYDON W. HARMAN, RALPH EDWARD HARMAN, JAMES HEAD, ROY Z. HELLER, PATRICIA A. HENRY, EUGENE HIVELY, ROBERT L. HOFF, EARNIE HOLBROOK, HASKEHL HOLBROOK, DOROTHY HOLLAND, LOIS E. HOLLAND, GERRY L. HOPSON, NORRIS B. HOP-

SON, RICHARD M. HOWE, CARRIE F. HUFF, JAMES E. ICKES, LARRY P. JACK, BOBBY J. JARVIS, JOYCE JENKINS, FREDDIE A. JONES, LARRY JONES, LINDA JONES, LOVELL JONES, LEONARD D. KANNAL, RICHARD A. KANNAL, HAROLD V. KING, JANET L. KIRKSEY, DONNA J. KISER, EXECUTRIX OF THE ESTATE OF RAY L. KISER, TONY KISER, BERNARD A. KOEHLER, DALE A KOON, TODD A. KOVACS, ROBERT L. KUHN, RONALD E. KUHN, GERALD L. LAMP, RONALD E. LANKFORD, JOYCE C. LAROCCO, ROBERT H. LASCH, KEN LAUGHLIN, RONALD B. LAUGHLIN, DONNA LAVY, TERRY LEECH, MARK LEMASTER, GERALD LIGHTNER, DAVID LOSHARK, ANNETTE LLOYD, LAYNARD MCCARTY, TERRY L. MCCLELLAN, MELVIN MCCLUNG, BERNICE MCCOY, DAVID MCCROSKEY, FRED MCGAVERN, KENNETH L. MCKEE, DIANNA MACHAMER, JEFFREY R. MACHAMER, RANDALL MACHAMER, DAVID S. MALONE, JOSEPH R. MARCHI, DAVID RAY MARCIN, RUDOLPH E. MARINI, STEVE MATHEOS, ROBERT J. MAY, VICTORIA MEADOWS, DAVID J. MENCER, MICHAEL J. MESKO, RONALD D. MIKES, GARY D. MILLER, GARRY J. MILLER, HARRY E. MILLER, LINDA D. MILLER, PATRICIA A. MONNOT, ROY D. MOON, HAROLD L. MORRIS, MARK MUDRICK, RUSSELL W. MYERS, HAROLD T. NEFF, HOBERT NICHOLS, JR., RICHARD D. OAKS, BERNARD E. OGG, AMOS OTTO, SANDRA L. PALMER, RONALD E. PARK, MIKE PASPALOVSKI, JERRY L. PATCHIN, MARY R. PACTHIN, FREDERICK W. PERCY, JR., REED PONTIUS, ROSEMOND V. PURDY, JR., ROWLAND PURDY, DONALD RADSICK, JOANNE RADSICK, SHIRLEY A. REPIK, EARL REYNOLDS, RICHARD V. RILEY, DEBORAH K. ROAR, INEZ ROLLYSON, ROY DWIGHT ROMINE, STEVE ROSAK, DANNY ROSE, JAKE ROSE, PAUL W. RUDOLPH, GARY E. RUSH, GLEN W. SAWYERS, JR.,

HARRY L. SCHILLIG, TERRY SELLS, ROYDEN L. SHAFER, MICHAEL T. SLATTERY, ELLEN K. SMITH, RANDY SMITH, TIMOTHY W. SMITH, BEVERLY ANN SNYDER, DAVID F. STARCHER, MARGARET STINARD, EDDIE STREET, JAMES STRITTMATTER, WILLIAM L. SWIGER, ROBERT E. SWONGER, DANIEL LEE SYCKS, RON TESSMER, SHARON TESSMER, DEWEY L. THARPE, BONNIE THOMAS, GARY R. THOMPSON, JEFFREY L. THURMAN, DAVID TIERNEY, GERALD M. TROUT, WANDA S. TURKSON, PAUL A. VADASZ, DAN VENCE, GARY WALLACE, BARBARA A. WALLBROWN, STEVEN E. WALLBROWN, JAN E. WARD, JOHN R. WATKINS, ROBERT M. WEBB, DAVID L. WEBBER, RONALD C. WEBSTER, WILLIAM L. WEEKLY, SPENCER E. WEST, LARRY WHETSELL, DONOVAN P. WHITAKER, GARY WILHELM, FANNIE WILLIAMS, WAYNE D. WILLIAMS, LOREN D. WILSON, PAUL WILSON, LORA L. WIMER, KEN WOLF, HOWARD WOODBURN, GLENN E. WOODS, WILLIAM YAKUBIK, MARSHA J. YOUTZ, RUSSEL D. YOUTZ, RICK ZERBE, ROY BARBER, DONALD BILTZ, EARL FORD, RONALD SUMMERS, KEITH UMBERGER, MATTHEW WIEDERMAN, JAMES APITZ, DANIEL BRENNER, RICHARD ESPENSCHIED, EARL MCCLUNG, FLOYD MULLETT, ROBERT SNYDER, DONALD TALARICO AND RON WEISEL.

No. 94-103

Supreme Court, U.S.
FILED
AUG 18 1994
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1994

JOHN R. ADCOX, *et al.*,

Petitioners,

vs.

TELEDYNE, INC., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA AND ITS LOCAL 99

CHARLES R. ARMSTRONG
URW General Counsel
Counsel of Record
CAROLYN T. WONDERS
URW Assistant General Counsel
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5560
Lutz Appellate Services, Inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

19 pp

QUESTIONS PRESENTED FOR REVIEW

I. Whether a federal court has jurisdiction under § 301 to determine whether a collective bargaining agreement itself constitutes a violation of a pre-existing collective bargaining agreement.

II. Whether § 301 or 28 U.S.C. § 1337(a) confers jurisdiction over a claim against a union for breach of its duty of fair representation where the court has dismissed a breach of contract claim against the employer and the alleged breach of the duty of fair representation is inextricably intertwined with the alleged breach of contract claim.

PARTIES TO THE PROCEEDING

The Defendant-Respondents in the present case are Teledyne Monarch Rubber, a division of Teledyne Industries, Inc., which, in turn, is a wholly-owned subsidiary of Teledyne, Inc. (hereinafter "Teledyne"), the United Rubber, Cork, Linoleum and Plastic Workers of America International Union (hereinafter "URW International") and United Rubber Workers Local Union 99 (hereinafter "Local 99").

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No. 94-103

In The

Supreme Court of the United States

October Term, 1994

JOHN R. ADCOX, *et al.*,

Petitioners,

vs.

TELEDYNE, INC., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA AND ITS LOCAL 99

Respondents, URW International Union and Local 99, request that the petition for writ of certiorari be denied.

COUNTERSTATEMENT OF THE CASE

Petitioners in this case seek to obtain a severance award benefit entitled a "Special Distribution", the existence of which was extinguished by a collectively-bargained plant closure agreement. Briefly, Petitioners were production and maintenance employees covered by a series of collective bargaining agreements negotiated over the years by Respondent Teledyne and Local 99, the most recent running from 1988 through June 15, 1991, when the plant closed. (Pet. App. C, D, E). These agreements included a Pension, Insurance and Service Award Agreement which contained provisions for employer-provided retiree medical benefits, and for a "Special Distribution" award for employees with five years of service, who had lost their jobs due to the permanent discontinuance of operations and who were "not eligible for a pension under any pension plan of the employer." (Pet. App. G).

The "Special Distribution" language had been negotiated years ago when there were both age and service requirements for pension vesting, and had been most recently updated in 1988 when an employee still needed ten years of service (no age requirement) in order to be entitled to a vested pension benefit under the pension plan. (R:50, Hartong deposition, p. 23; R:46, Kennedy deposition, p. 44; Pension Plan Section 4.9). Between the effective date of the 1988 collective bargaining agreement and the plant closure, the Tax Reform Act of 1986 (P.L. 99-154) amended § 411(a) of the Internal Revenue Code of 1986 and § 203(a) of the Employee Retirement Income Security Act of 1974 to require pension plans to adopt one of two vesting schedules, one of which entitled participants to a vested benefit after five years of service. Teledyne adopted this amendment to the plan effective January 2, 1989, thereby making every employee eligible for at least a deferred vested pension (every employee in the unit had at least five years service). (R:50, Hartong deposition, p. 23; R:37, Bixler deposition, pp. 15, 16, 58, 66, 72, 102).

In January 1991, Teledyne announced that it would close the Hartville facility and terminate the employees, effective June 15, 1991. (R:37, Boggs affidavit, Exhibit B; R:62, Plaintiffs' Exhibit 1). During the next six months, Teledyne and Local 99 engaged in numerous effects bargaining sessions with the goal of reaching a plant closure agreement. (R:37, Boggs affidavit, paragraphs 6-10).

During these negotiations, there were two main areas of contention: retirees' medical benefits and the Special Distribution. Local 99 maintained that the retirees, current and future, were entitled to lifetime medical benefits under the agreement, while Teledyne maintained that the benefits terminated with the expiration of the 1988 agreement (*i.e.* June 15, 1991). (R:37, Boggs affidavit, paragraphs 14-15). Local 99 further claimed that all employees who were otherwise eligible for the Special Distribution and who were not eligible for *immediate* pension benefits were entitled to a Special Distribution. (R:37, Boggs affidavit, paragraph 15).

Local 99 faced the near certainty of lengthy litigation and the possibility of losing not only the Special Distribution but also retiree medical benefits. (R:37, Boggs affidavit, paragraph 15). Under these circumstances, Local 99 negotiated a compromise. In lieu of the Special Distribution, Teledyne agreed to permit lump sum distributions of pension benefits so that employees would have access to immediate cash. (Pet. App. KK). Teledyne also agreed to provide lifetime retiree medical benefits subject to a cap on the company-paid premium, and to provide short-term health coverage to terminated employees with a cash buy-out option. (Pet. App. KK). The Plant Closing Agreement also included a broad release provision terminating all Teledyne liability under prior agreements. (Pet. App. KK).

The Plant Closing Agreement was initially rejected by the Local 99 membership on June 14, 1991. (R:37, Boggs affidavit, paragraph 19).

Afterward, in a telephone poll, a majority of the membership indicated interest in reconsidering the Plant Closure Agreement. (R:47, Boggs deposition, p. 26; R:37, Bixler deposition, pp. 36-37). On June 28, 1991, a meeting was held for the purpose of deciding whether there should be another vote. (R:37, Bixler deposition, pp. 35-36, and 39). The meeting became hostile, and those who were strongly opposed to the closure agreement called for a vote by "splitting the hall," and then physically intimidated many members into going to the "no" side of the hall. (R:37, Boggs affidavit, paragraph 20). The majority then voted against the motion for reconsideration. (R:37, Bixler deposition, p. 39).

In July 1991, "honorary withdrawal" cards were issued by Local 99 to all members except the officers. (R:52, May deposition, pp. 32-33). Under the URW Constitution, an honorary withdrawal card is automatically issued to an employee who has been terminated and who has not applied for a dues waiver. (R:70, Coss deposition, p. 19). Local 99 issued the withdrawal cards so that the employees could obtain a waiver of other unions' initiation fees if they were hired at union-organized plants. (R:47, Boggs deposition, pp. 54, 72-73).

Early in August 1991, Teledyne increased its offer concerning the buy-out of the short-term medical benefits provision. (R:37, Bixler deposition, p. 42; R:37, Boggs affidavit, paragraph 21). Local 99 then conducted a post card poll of the group affected by the closure to determine whether they wanted to vote on the Plant Closing Agreement with Teledyne's latest proposal. (R:37, Boggs affidavit, paragraph 22; R:37; Bixler deposition, pp. 85-87). Beginning in April 1991, Local 99 President Boggs had informed the membership that all employees who had been employed by Teledyne on January 30, 1991 (the date of Teledyne's closure announcement) would be permitted to vote on the closure agreement, and it was these individuals who received post cards. (R:37, Boggs affidavit, paragraph 22; R:37, Bixler deposition, pp.

45, 69, 85-87; R:52, May deposition, pp. 38-39). Because a majority of those returning post cards indicated a desire to vote on the agreement, a secret ballot vote was scheduled for August 22, 1991. (R:37, Boggs affidavit, paragraph 23; R:37, Bixler deposition, p. 87).

The URW Constitution does not deal with plant closings or plant closure agreements, but with respect to collective bargaining agreements for ongoing operations, provides that a collective bargaining agreement can be reconsidered if a majority of the members voting want reconsideration. (R:70, Coss deposition, pp. 17-19, 35). Although the URW Constitution does not require a secret ballot vote for collective bargaining agreements, it was Local 99's standard procedure for a contract vote. (R:37, Bixler deposition, pp. 44-45).

The Plant Closing Agreement was ratified by a majority of those voting on August 22, 1991. (R:37, Boggs affidavit, paragraph 24). The Agreement was signed by Union and Teledyne representatives on August 26, 1991, and was fully implemented. (Pet. App. KK; R:62, Plaintiffs' Exhibit 37).

Petitioners then filed this action, seeking to require Teledyne to pay the Special Distribution notwithstanding the release in the Plant Closing Agreement.

Petitioners' action was a "hybrid action" filed under § 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185(a) alleging that Teledyne had breached the 1988 agreement and that Local 99 had breached its duty of fair representation, when they negotiated and ratified the Plant Closing Agreement. Additionally, Petitioners alleged jurisdiction under 28 U.S.C. § 1337(a) and § 9(a), 29 U.S.C. § 159(a) with respect to the claimed union's breach of its duty of fair representation.

On cross motions for summary judgment, the district court dismissed Petitioners' claims for lack of federal jurisdiction and the Court of Appeals for the Sixth Circuit affirmed that ruling. The Sixth Circuit also held that (i) Local 99 had not breached its duty of fair representation because its actions were not arbitrary, discriminatory or in bad faith; (ii) Petitioners had no pre-existing vested right to the Special Distribution; and (iii) Plaintiffs' claim of promissory estoppel against Teledyne failed as Plaintiffs did not allege Teledyne ever promised the Special Distribution, and thus, could not show justifiable reliance.

SUMMARY OF ARGUMENT

Petitioners' arguments in support of granting a writ of certiorari are without merit. Although Petitioners argue that there is a split in the circuits on the issue of federal court jurisdiction to determine the "validity" or "existence" of a collective bargaining agreement under § 301, this does not accurately characterize either the rulings of the circuits or the issue raised in this case.

The primary issue raised in this case is whether federal courts have § 301 jurisdiction, where, as here, it is alleged that a collective bargaining agreement itself violated the employees' purported pre-existing rights. The plain language and legislative history of § 301 indicate that federal jurisdiction exists only in cases alleging "violation of contracts," and not "violation *by* contracts." The only circuits to have addressed this issue, the First, Third and Sixth Circuits, have all ruled the same way.

Furthermore assuming that § 301 jurisdiction did exist, it would be moot because the court also found that there was no pre-existing contractual right to the Special Distribution. Therefore there could have been no breach of contract.

Petitioners' second argument that independent jurisdiction

under § 1337(a) exists regarding the Union's alleged breach of its duty of fair representation is equally without merit. The Sixth Circuit correctly ruled that where the alleged breach of the duty of fair representation is interdependent with an alleged breach of contract claim; *i.e.*, a colorable claim of a contract breach is raised by the Plaintiff then independent § 1337 jurisdiction does not exist. Even assuming the Sixth Circuit erred in this finding, the issue is moot because the court of appeals further found that Local 99 did not breach its duty of fair representation.

REASONS FOR DENYING THE WRIT

I.

THERE IS NO REASON TO REVIEW THE SIXTH CIRCUIT'S RULING THAT IT DID NOT HAVE JURISDICTION UNDER § 301 TO DETERMINE WHETHER THE PLANT CLOSING AGREEMENT ITSELF CONSTITUTED A VIOLATION OF THE 1988 COLLECTIVE BARGAINING AGREEMENT BY TELEDYNE.

Section 301 allows suits to be brought in the district courts "for violation of contracts between an employer and a labor organization . . ." 29 U.S.C. § 185(a). *See Smith v. Evening News Association*, 371 U.S. 195 (1962). The key phrase of the statute for purposes of this proceeding is "violation of contracts." The Congressional purpose of § 301 was to encourage collective bargaining by making collective bargaining agreements enforceable in the federal courts, *i.e.*, to allow suit for violation *of* such contracts. The Senate Report on the bill which became the LMRA stated with respect to § 301, "[c]onsequently, to encourage the making of agreements and to promote industrial peace though faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the federal

courts." S. Rep. No. 105, 80th Cong., 1st Sess., p. 16. The House of Representatives' sentiments concerning its version of § 301 were similar to the Senates: "[w]hen labor organizations make contracts with employers, such organizations should be subject to the same judicial remedies and processes in respect of proceedings involving violations of such contracts as those applicable to all other citizens." H.R. Rep. No. 245, 80th Cong., 1st Sess., p. 46. This Court, upon review of the legislative history of § 301 in *Dowd Box Co. v. Courtney,* 368 U.S. 502, 509 (1962), concluded that § 301 was part of a "far-reaching and many-faceted legislative effort to promote the achievement and refinement of the collective bargaining process" by assuring "both parties to a collective bargaining agreement . . . that the contract they had negotiated would be honored." *Accord, Textile Workers v. Lincoln Mills,* 353 U.S. 448, 452-54 (1957).

Instead of alleging "violation *of* a contract," Petitioners sought to allege a "violation *by* a contract," contending that purported pre-existing rights had been violated by the Plant Closing Agreement. Such a claim does not fall under the express wording of § 301, nor is it encompassed within the Congressional purpose for the statute. Keeping in mind that collective bargaining agreements are typically negotiated every three years, with the rights of the parties changing and evolving from one agreement to the next, a suit under § 301 claiming the most recent agreement violates rights under earlier, expired agreements would never promote collective bargaining and achieve industrial peace.

Furthermore there is no split among the circuits on this issue. The Third Circuit addressed the issue first in *Adams v. Budd Co.,* 349 F.2d 368 (3d Cir. 1965). In that case, employees filed a § 301 action alleging that an existing agreement violated superseniority rights granted by earlier, expired agreements. The court explained that § 301 provided jurisdiction for claims of a "violation of a collective bargaining agreement" but that it did not provide

jurisdiction for claims of "an alleged violation *by* a labor contract of preexisting contract rights." 349 F.2d at 370. *Accord, Leskiw v. Local 1470, Int'l Bro. of Elec. Wkrs.*, 464 F.2d 721 (3d Cir. 1972), *cert. denied*, 409 U.S. 1041 (1972), and cited with approval in *Mack Trucks Inc. v. Intern. Union UAW*, 856 F.2d 579, 589 (3d Cir. 1988).

In *Hernandez v. National Packing Co.*, 455 F.2d 1252, 1253 (1st Cir. 1972) the First Circuit cited *Adams* in support of its ruling denying § 301 jurisdiction, where the plaintiffs alleged that a collective bargaining agreement violated their pre-existing rights to be represented by another union. The court noted that "while . . . a district court might be obliged to consider the validity of a collective bargaining agreement *when asked to enforce one of its provisions* at the behest of the employees, . . . the present case is in a wholly different posture." *Id.*

The Sixth Circuit has likewise addressed the issue in *Heussner v. Nat'l Gypsum Co.*, 887 F.2d 672 (6th Cir. 1989). Like the *Adcox* plaintiffs, the *Heussner* plaintiffs sued their union and their employer under § 301 alleging that an existing labor agreement violated rights to severance pay under an earlier agreement. Citing the Third Circuit *Mack Trucks* case in support, the court refused to confer jurisdiction under § 301 to determine whether the subsequent agreement violated rights that Heussner previously possessed under the earlier agreement. In *Adcox*, the Sixth Circuit found that the Plant Closing Agreement superseded the 1988 Agreement and cited *Heussner* as controlling.

None of the other cases cited by Petitioners conflict with the above rulings. In fact they all stand for the separate proposition that under § 301 a federal court may determine whether a contract "exists" as part of determining whether *that* contract was violated or is enforceable. *See Kozera v. Westchester-Fairfield Elec. Contractors*, 909 F.2d 48 (2d Cir. 1990), *cert denied*, 498 U.S.

1084 (1991); *Mack Trucks, Inc., supra*; *United Steelworkers v. Rome Indus., Inc.*, 437 F.2d 881 (5th Cir. 1970); *IBEW, Local 481 v. Sign-Craft, Inc.*, 864 F.2d 499 (7th Cir. 1988); *Rozay's Transfer v. Local Freight Drivers, Local 208*, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 479 U.S. 1065 (1989); *McNally Pittsburgh, Inc. v. Int'l Ass'n of Bridge Workers*, 812 F.2d 615 (10th Cir. 1987); *Bd. of Trustees v. Universal Enters., Inc.*, 751 F.2d 1177 (11th Cir. 1985).

The *Adcox* case falls squarely within the *Adams/Heussner* line of cases, and not within the § 301 existence/enforcement cases cited above. The *Adcox* plaintiffs did not seek to enforce the Plant Closing Agreement. There is no issue that the Agreement "existed": it was reduced to writing, signed and implemented by the parties. Instead they have essentially asserted that the Plant Closing Agreement violated their rights under the 1988 Agreement. This removes them from the ambit of § 301.

Even assuming that § 301 jurisdiction did not exist, the issue would be moot because the Sixth Circuit also found that the Special Distribution did not "vest" by the contract, *i.e.*, there was no contractual entitlement to it in the first place. Thus the absence of a provision for the Special Distribution within the Plant Closing Agreement could not have been a contract violation cognizable under § 301.

II.

THERE IS NO REASON TO REVIEW THE SIXTH CIRCUIT'S RULING THAT NEITHER § 301 NOR § 1337 JURISDICTION EXISTED WITH RESPECT TO THE UNION'S ALLEGED BREACH OF THE DUTY OF FAIR REPRESENTATION BECAUSE THE ALLEGED BREACH WAS INTERDEPENDENT WITH AN ALLEGED CONTRACT VIOLATION CLAIM WHICH HAD BEEN DISMISSED.

Petitioners actually filed a hybrid § 301 claim which requires establishing *both* that the employer violated a collective bargaining agreement and that the union breached its duty of fair representation; *e.g.*, *Vaca v. Sipes,* 386 U.S. 171 (1967); *Hines v. Anchor Motor Freight,* 424 U.S. 554 (1976). In their complaint they further alleged jurisdiction for the breach of the duty of fair representation claim under 28 U.S.C. § 1337(a) and 29 U.S.C. § 9(a).

In this case, the alleged breach of the duty of fair representation is interdependent with the alleged contract violation; *i.e.*, unless there was a contractual entitlement to the Special Distribution in the first place, there could be no arguable breach of the union's duty of fair representation in negotiating and/or ratifying a closure agreement which did not contain such a provision.

The Sixth Circuit correctly ruled that despite artful pleading, if a complaint states a quintessential § 301 claim, then § 9(a) and § 1337(a) jurisdiction is not available. As long as a complaint makes a colorable claim under a collective bargaining agreement, it must be construed as a § 301 action. There is no split in the circuits on this issue.

Because the *Adcox* Petitioners presented a colorable claim

under a collective bargaining agreement for the Special Distribution, § 9(a) and § 1337(a) jurisdiction against Local 99 does not exist. Because they are claiming a violation of their contractual rights *by* the Plant Closing Agreement rather than seeking to enforce a collective bargaining agreement, § 301 jurisdiction does not exist with respect to Local 99.

Even assuming that jurisdiction existed under either § 301 or § 1337(a), it would be moot because the court of appeals further ruled that Local 99 did not breach its duty of fair representation; *i.e.*, the Union's conduct was not arbitrary, discriminatory or in bad faith. *Airline Pilots Ass'n Int'l v. O'Neil*, 499 U.S. 65 (1991).

CONCLUSION

For the reasons set forth above and on the authorities cited, we respectfully submit that a writ of certiorari should not issue to the Court of Appeals for the Sixth Circuit and request that this petition be denied.

Respectfully submitted,

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On Petition For A Writ Of Certiorari To The Sixth Circuit Court Of Appeals

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDINGS AND RULE 29.1 LIST

The defendant-respondents in the present case are Teledyne Monarch Rubber, a division of Teledyne Industries, Inc., which, in turn, is a wholly-owned subsidiary of Teledyne, Inc. ("Teledyne" hereinafter), the United Rubber, Cork, Linoleum and Plastic Workers of America International Union and United Rubber Workers Local Union No. 99 ("URW" hereinafter).

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On Petition For A Writ Of Certiorari To The Sixth Circuit Court Of Appeals

BRIEF IN OPPOSITION

Respondents, Teledyne, Inc. and Teledyne Industries, Inc. Monarch Rubber Division, request that the Petition for Writ of Certiorari be denied.

COUNTERSTATEMENT OF THE CASE

The claim in this case is for a severance pay-type benefit—a "Special Distribution"—provided for in the "Service Award Agreement", a collective bargaining agreement between Teledyne and the URW, which expired on June 16, 1991 pursuant to a notice from Teledyne to the URW. (App. B-2.) The Special Distribution was payable upon permanent discontinuance of operations only to

employees with five years of service who were "not eligible for a pension under any pension plan" of Teledyne. (App. B-3, B-13 n.3.)

Amendments to Section 203(a) of ERISA, 29 U.S.C. § 1053, required the Teledyne Monarch Rubber Hourly Pension Plan (the "Pension Plan") to lower its vesting requirement to five years of service, effective as of January 1, 1989. (App. B-14; Pub. L. No. 99-514 § 1113(e)(2); J.A. 382.) Thus, at the time of the instant plant closure in 1991, all of the employees were entitled to at least a deferred vested pension benefit from the Pension Plan. (App. B-3.) Consequently, Teledyne consistently took the position with the URW during "effects" bargaining over the plant closure that none of the employees would be entitled to a Special Distribution. (App. B-2, B-3; J.A. 275-76.)

Following months of hotly contested collective bargaining, Teledyne and the URW negotiated a Plant Closing Agreement providing for costly benefits for the employees, including lump-sum pension benefits and a lifetime retiree medical program, but releasing any claim for the Special Distribution benefit. (App. B-3, B-4; J.A. 838-46, 845 ¶ 10.) The Plant Closing Agreement, as modified, was ratified by secret ballot on August 22, 1991. (App. B-4.)

Teledyne performed its obligations under the Plant Closing Agreement by paying out millions of dollars in lump-sum pension benefits to over three hundred fifty employees; establishing a lifetime retiree medical program costing more than one million dollars per year for many years into the future; and continuing medical coverage for employees not eligible for immediate retirement. (App. B-5; J.A. 357, 358.)

Plaintiffs/Petitioners, employees who had received benefits under the Plant Closing Agreement, then filed this suit against Teledyne and the URW, seeking to force Teledyne to pay the Special Distribution benefit, notwithstanding the release in the Plant Closing Agreement. Plaintiffs alleged jurisdiction under § 301 of the Labor Management Relations Act, arguing that the Plant Closing Agreement itself was a violation of purported preexisting rights to the Special Distribution.

On cross motions for summary judgment, the district court dismissed Plaintiffs' claims for lack of federal jurisdiction, and the Court of Appeals for the Sixth Circuit affirmed that ruling. (App. A-17, B-19.) The Sixth Circuit also held that (i) the URW had not violated any duty of fair representation as its actions were neither irrational nor taken in bad faith (App. B-12); (ii) Plaintiffs had no preexisting vested right to the Special Distribution (App. B-14); and (iii) Plaintiffs' claim of promissory estoppel against Teledyne failed as Plaintiffs did not allege Teledyne ever promised the Special Distribution and, thus, Plaintiffs could not show any justifiable reliance. (App. B-15.)

SUMMARY OF THE REASONS FOR DENYING THE WRIT

The Petition does not present any issues requiring review by this Court. Petitioners' primary reason for seeking the writ, an alleged split in the Circuits on the issue of whether a Federal Court has jurisdiction to determine the validity or existence of a labor agreement, is illusory, not real. It can be resolved on the basis of the facts of the case. The Sixth Circuit correctly decided that the federal courts do not have jurisdiction under § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), where, as here, it is alleged that a collective bargaining agreement

itself violated the employees' purported preexisting rights. Federal jurisdiction over such a claim was not intended by Congress, as evidenced by the plain language of § 301 and its legislative history.

No other Court of Appeals has decided the jurisdictional issue differently than the Sixth Circuit; in fact, the Third Circuit has decided the same issue in precisely the same way as the Sixth. The decisions cited in the Petition as an indication of an alleged split do not deal with the issue raised in this case.

Finally, other holdings by the Sixth Circuit in this case, notably, that the URW did not violate its duty of fair representation, and that Petitioners had no vested rights in the Service Award, establish that the result below would have been the same had the lower courts found jurisdiction under § 301. The nonjurisdictional questions presented for review by Petitioners deal with factual matters decided correctly by the Sixth Circuit. Those issues are not of any importance outside of this case. Accordingly, the Court should deny the Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT

I. There Is No Reason For The Court To Review The Ruling Regarding § 301 Jurisdiction

Plaintiffs/Petitioners sought to assert a so-called "hybrid" § 301 claim which requires establishing that the employer violated a collective bargaining agreement and the Union violated its duty of fair representation. *See, e.g., Vaca v. Sipes,* 386 U.S. 171 (1967), and *Hines v. Anchor Motor Freight,* 424 U.S. 554, 570-71 (1976). However, the claim here was very unusual in that the existing collective

bargaining agreement was not alleged to have been violated. The Plant Closing Agreement released claims for the Special Distribution; hence, nonpayment of the Special Distribution was not a violation of that agreement by Teledyne. The Service Award Agreement, which contained the Special Distribution provisions, had expired before execution of the Plant Closing Agreement and almost six months before suit was filed. Thus, Plaintiffs contended that "preexisting rights" —*i.e.,* alleged vested rights in the Special Distribution, or alleged quasi-contractual rights based on a theory of promissory estoppel—had been violated and that the violation of those "preexisting rights" was the Plant Closing Agreement itself. Both the district court and the Sixth Circuit correctly decided that federal jurisdiction under § 301 of the LMRA did not lie with respect to the claim.

A. The Plain Words of § 301 and Its Purpose Precluded Federal Jurisdiction Over Petitioners' Claim.

Section 301 allows suit to be brought in the district courts "for violation of contracts between an employer and a labor organization". 29 U.S.C. § 185(a). The Congressional purpose of § 301 was to encourage collective bargaining by making collective bargaining agreements enforceable in the federal courts, *i.e.,* to allow suit for violation of such contracts. The Senate Report on the bill which became the LMRA stated with respect to § 301, "[c]onsequently, to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the federal courts." S. Rep. No. 105, 80th Cong., 1st Sess., at 16 (1947). The House of Representatives' sentiments concerning its version of § 301 were similar to the Senate's:

"[w]hen labor organizations make contracts with employers, such organizations should be subject to the same judicial remedies and processes in respect of proceedings involving violations of such contracts as those applicable to all other citizens." H.R. Rep. No. 245, 80th Cong., 1st Sess., at 46 (1947). This Court, upon review of the legislative history of § 301 in *Dowd Box Co. v. Courtney*, 368 U.S. 502, 509 (1962), concluded that § 301 was part of a "far-reaching and many-faceted legislative effort to promote the achievement of industrial peace through encouragement and refinement of the collective bargaining process" by assuring "both parties to a collective bargaining agreement . . . that the contract they had negotiated would be honored." *Accord Textile Workers v. Lincoln Mills*, 353 U.S. 448, 452-54 (1957).

Instead of alleging "violation of a contract", Petitioners sought to allege a "violation by a contract", contending that purported rights under the expired collective bargaining agreement had been violated by the Plant Closing Agreement. Such a claim does not fall under the express wording of § 301, nor is it encompassed within the Congressional purpose for the statute. Given that collective bargaining agreements are typically negotiated every three years, with the rights of the parties changing and evolving from one agreement to the next, permitting suits under § 301 claiming the most recent agreement violates rights under earlier, expired agreements would never promote collective bargaining and achieve industrial peace. Here, Petitioners sought to overturn bargaining judgments made by the URW and ratified by the employees in order to hold Teledyne liable for doing no more than engaging in labor negotiations as required by law and carrying out the agreement reached, again, as required by law. *See* Section 8(d)

of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 158(d). The lower courts in this case were correct in holding that § 301 of the LMRA did not provide jurisdiction for such a claim.[1]

B. The Sixth Circuit, in Accord With the Third Circuit, Correctly Interpreted § 301.

Almost thirty years ago, the Third Circuit decided that § 301 did not provide jurisdiction for an action alleging violation of preexisting rights by a collective bargaining agreement. In *Adams v. Budd Co.*, 349 F.2d 368 (3d Cir. 1965), employees sued their employer and union under Section 301 alleging that an existing labor agreement violated "superseniority" rights granted by earlier, expired agreements. In holding there was no jurisdiction under § 301 for such a claim by employees, the Third Circuit explained that § 301 allowed redress for "violation of a collective bargaining agreement"; but, it did not allow redress for "an alleged violation by a labor contract of [independent, pre-agreement] rights. . . ." 349 F.2d at 370 (emphasis in original). The holding in *Adams* was followed by the Third Circuit in *Leskiw v. Local 1470, Int'l Bhd. of Elec. Workers*, 464 F.2d 721, 723 (3d Cir.), *cert. denied*,

[1]Teledyne submits that Petitioners' sole recourse, if any, was against the URW for alleged violation of the URW's duty of fair representation under § 9(a) of the NLRA, 29 U.S.C. § 159(a). Petitioners initially filed an unfair labor practice charge with the NLRB against the URW, but voluntarily withdrew it. Though Petitioners asserted in this suit that the URW violated its duty of fair representation, the lower courts found that that allegation was made simply to support their "hybrid" § 301 claim against Teledyne. In any event, the Sixth Circuit held, alternatively, that the URW's judgments were not made in bad faith and not so unreasonable as to violate its duty of fair representation. That ruling was wholly in accord with the decisions of this Court. *See e.g., Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953); *Air Line Pilots Ass'n Int'l v. O'Neill*, 499 U.S. 65 (1991).

409 U.S. 1041 (1972), and cited with approval more recently in *Mack Trucks, Inc. v. International Union, UAW*, 856 F.2d 579, 589 (3d Cir. 1988), *cert. denied*, 489 U.S. 1054 (1989).

The instant decision by the Sixth Circuit was based on its earlier ruling in *Heussner v. National Gypsum Co.*, 887 F.2d 672 (6th Cir. 1989), which, in turn, was in accord with the decisions of the Third Circuit. Employees in *Heussner* sued their union and employer under § 301 alleging that an existing labor agreement violated rights to severance pay under an earlier agreement. After noting that the Third Circuit in *Mack Trucks* had stated that "a party may not invoke Section 301(a) jurisdiction by asserting that a collective bargaining contract itself constituted a violation of other preexisting rights of employees," the Sixth Circuit ruled in *Heussner* that "we decline in this case to confer jurisdiction on the district court to determine whether the 1987 Agreement itself violated rights that Heussner previously possessed under the 1984 Agreement." *Heussner*, 887 F.2d at 676 n.2.[2]

As the facts in *Heussner* were virtually identical to the facts in the instant case, the Sixth Circuit did little more herein than cite *Heussner* as controlling the issue of § 301 jurisdiction. However, the Court of Appeals did explain that "[b]ecause [the Plant Closing] Agreement superseded the 1988 collective bargaining agreement, including the Service Award Agreement, upon which plaintiffs' § 301 claim against Teledyne depends, there was no breach here

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[2]The Court of Appeals for the First Circuit also has cited the Third Circuit's *Adams* decision with approval in denying § 301 jurisdiction for a claim alleging that a collective bargaining agreement violated the employees' preexisting right to be represented by another union. *Hernandez v. National Packing Co.*, 455 F.2d 1252, 1253 (1st Cir. 1972).

that would support a § 301 claim." (App. B-7.) Accordingly, the Sixth Circuit's interpretation of § 301 in this case comports with the language of the statute, its purpose and the decisions of the Third Circuit, all of which establish that a claim for violation of alleged rights under an expired labor agreement by a superseding labor agreement is not within the jurisdiction of the federal courts under § 301.

C. There Is No Divergence of Opinion Among the Courts of Appeals on the Issue Decided by the Sixth Circuit.

Petitioners incorrectly argue that other Courts of Appeals have decided the instant jurisdictional question differently than the Sixth Circuit. None of the decisions cited in the Petition hold that § 301 jurisdiction lies where the plaintiff claims preexisting rights were violated by a collective bargaining agreement. The decisions cited by Petitioners deal with the issue of whether a federal court has jurisdiction under § 301 to determine whether a contract "exists" as part of determining whether the contract was violated or is enforceable. *See Kozera v. Westchester-Fairfield Elec. Contractors,* 909 F.2d 48 (2d Cir. 1990), *cert. denied,* 498 U.S. 1084 (1991) (jurisdiction to find that a contract existed as it was signed by a union official with apparent authority); *Mack Trucks, Inc., supra* (jurisdiction to find a meeting of the minds between the parties created a contract even though the union refused to sign the formal document); *United Steelworkers v. Rome Indus.,* 437 F.2d 881 (5th Cir. 1970) (in an action under § 301 to enforce a "contract", the court had jurisdiction to find a contract did not exist due to lack of agreement on various proposals during labor negotiations); *International Bhd. of Elec. Workers, Local 481 v. Sign-Craft, Inc.,* 864 F.2d 499 (7th Cir. 1988) (jurisdiction to determine whether an employer

was covered by a contract negotiated by a multiemployer bargaining association); *Rozay's Transfer v. Local Freight Drivers, Local 208,* 850 F.2d 1321 (9th Cir. 1988), *cert. denied,* 490 U.S. 1030 (1989) (jurisdiction to determine no meeting of the minds between the parties due to misrepresentations by a union official); *McNally Pittsburg, Inc. v. International Ass'n of Bridge Workers,* 812 F.2d 615 (10th Cir. 1987) (court had jurisdiction to find a contract did not exist, as it was signed by mistake); *Board of Trustees v. Universal Enters., Inc.,* 751 F.2d 1177 (11th Cir. 1985) (jurisdiction to find a contract existed, as the employer was an alter-ego of a signatory company).

The issue whether a federal court has jurisdiction under § 301 to determine the "existence" of a collective bargaining agreement in a suit seeking to enforce the agreement is not raised in this case. First, the instant suit did not seek to enforce the Plant Closing Agreement. Moreover, the Plant Closing Agreement obviously existed: it was negotiated over a six-month period; it was ratified by the employees; the contract was reduced to writing and signed by the URW and Teledyne; and Teledyne performed its obligations under the contract, paying out millions of dollars in benefits to the employees before suit was brought. Neither Teledyne nor the URW ever claimed the contract did not exist, and both parties agree the Plant Closing Agreement provides for exactly what was intended.[3]

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[3]Petitioners' claim that the employees were no longer members of the URW when they ratified the Plant Closing Agreement is not relevant to the Agreement's existence. The URW was the bargaining representative under § 9(a) of the NLRA and thereby represented "employees" whether members of the Union or not. 29 U.S.C. § 159(a). *See also Huffman, supra,* 345 U.S. at 338; 29 U.S.C. §§ 152(3) and (9).

Therefore, the "contract existence" decisions cited by Petitioners are beside the point here. Certainly, the conclusion cannot be drawn that because the Sixth Circuit was not required to decide a "contract existence" issue, and did not decide it, that the Court of Appeals would not do so in an appropriate case. There is no lack of uniformity among the Circuits concerning the issue decided by the Sixth Circuit in this case.

D. The Alternative Findings by the Sixth Circuit Establish That the Decision on Jurisdiction Did Not Affect the Outcome of This Case.

The result in this case would have been exactly the same had the lower courts entertained jurisdiction of Petitioners' "hybrid" § 301 claim. Petitioners were required to prove a violation of a contract by Teledyne as well as violation of the URW's duty of fair representation. "The two claims are inextricably interdependent." *DelCostello v. International Bhd. of Teamsters,* 462 U.S. 151, 164-65 (1983); *United Parcel Serv., Inc. v. Mitchell,* 451 U.S. 56, 66-67 (1981); *Hines v. Anchor Motor Freight, Inc., 424 U.S. at 570-71.*

A union breaches its duty of fair representation only if its actions are either arbitrary, discriminatory, or in bad faith. *Air Line Pilots Ass'n Int'l v. O'Neill,* 499 U.S. 65 (1991). Here, based on the evidence presented, the Sixth Circuit found that the Union's actions were not irrational and not taken in bad faith, and that Petitioners could point to no evidence of hostility or animosity on the part of the Union. Since the Court of Appeals held that the URW had not violated its duty of fair representation, Petitioners' § 301 action necessarily failed whether or not the courts assumed jurisdiction. Thus, the jurisdictional issue raised by Petitioners is moot. Accordingly, the Petition should be

denied, as review of the jurisdictional issue will not affect the outcome of the case.

II. The Remaining Questions Presented Seek To Have This Court Review Factual Determinations Made By The Sixth Circuit

Petitioners frame their remaining three questions for review in terms of legal issues to be decided by this Court. However, a review of the Petition reveals that in each instance the Court would have to reverse factual determinations made by the lower courts before reaching any question of law. The Sixth Circuit found that the URW did not violate its duty of fair representation, rendering moot the second question presented for review. The Sixth Circuit held that Petitioners had no vested rights in the Special Distribution, making clear that the third question posed in the Petition is not raised in this case. Similarly, the issue posed by the Petition's fourth question is not applicable to this case, as the Sixth Circuit found that Petitioners' promissory estoppel argument was deficient in that Teledyne had not made any extracontractual promises about the Special Distribution to employees.[4]

This Court has ruled that it will "not grant certiorari to review evidence and discuss specific facts." *United States v. Johnston,* 268 U.S. 220, 227 (1925). The remaining three questions presented for review are all "fact bound" and of no importance outside of this case.

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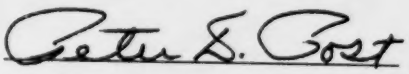
[4]The payments made in 1988 were a buy-out of employees' rights under an arbitration award arising out of the transfer of a product line to a nonunion facility and were not Special Distribution Benefits. (J.A. 394-95.) The list which calculated the amount of the Special Distribution was never provided to employees (J.A. 406), so it cannot be considered a representation by Teledyne on which Petitioners could have relied.

CONCLUSION

For the reasons hereinabove set forth and on the authorities herein cited, we respectfully submit that a Writ of Certiorari should not issue to the Court of Appeals for the Sixth Circuit.

Respectfully submitted,



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CERTIFICATE OF MEMBERSHIP

It is hereby certified that the attorneys whose names appear below are members of the bar of this Court.

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